(21,247.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 451.

LING SU FAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Stipulation as to record	1	1
Caption	2	2
Proceedings in court of first instance	3	2
Caption	3	2
Complaint	4	2
Demurrer to complaint	5	3
Order overruling demurrer	7	4
Plea of not guilty	7	4
Proceedings at the trial	8	4
Testimony of W. H. Polley	8	5
Juan Lankin	14	8
E. I. Totten	18	10
George Pinkham	20	11
Barrington King West	26	15
Government rests	27	15
Offer of Exhibit D[1]	28	16
Testimony of Arthur Wm. Oughterbridge	28	16
Ling Su Fan	31	18
Juan On Hing	40	23
Defendant rests	50	29
Testimony of George Pinkham (recalled)	51	29
Government rests	51	29
Testimony of George Francis Langford	52	29

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 6, 1908.

	Original.	Print.
Testimony of Wong Tai	54	31
Defendant rests	65	37
Testimony of T. K. Adreon	65	37
Testimony of W. W. Hoadley	67	38
Official reporter's certificate	69	39
Sentence	70	39
Notice of appeal given	73	41
Record on appeal transmitted	73	41
Assignment of errors	74	41
Decision	74	42
Motion for rehearing denied	96	52
Judgment	96	52
Petition for writ of error	98	53
Assignment of errors	99	54
Writ of error (copy)	100	55
Order allowing writ of error	101	55
Bond on writ of error	102	56
Citation and service (copy)	104	57
Defendant's Exhibit No. 1—Insurance policy	106	57
Writ of error (original)	113	60
Citation and service (original)	115	61
Clerk's certificate	116	62

1 In the Supreme Court of the United States of America.

LING SU FAN, Plaintiff in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands, Case No. 3962.

Stipulation.

It is hereby stipulated and agreed by and between the Honorable, the Attorney General for the Philippine Islands and the undersigned attorneys for the plaintiff in error, Ling Su Fan, herein, that the record of this case under Number 3962 of the Supreme Court of the Philippine Islands, and such pleadings and parts thereof as are copied, hereto attached, and forwarded to the Clerk of the Supreme Court at Washington, including the one exhibit in said cause, namely, Defendant and Appellant's (Plaintiff in Error herein) Exhibit No. 1, are true and correct copies of the original on file in said cause No. 3962 and of each and every part thereof, as are in said record copied and forwarded to said Clerk of the Supreme Court of the United States, at Washington, as aforesaid; that such translations from the Spanish to the English language as are made in said record so forwarded are true and correct and proper translations from the Spanish to the English language.

Manila, P. I., April 28th, 1908.

GREGORIO ARANETA,
Attorney General for the Philippine Islands.
LIONEL D. HARGIS,
C. W. O'BRIEN,
Attorneys for Plaintiff in Error.

2 In the Supreme Court of the United States.

LING SU FAN, Plaintiff in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands.

3 In the Supreme Court of the United States.

LING SU FAN, Plaintiff in Error,
versus
THE UNITED STATES OF AMERICA, Defendant in Error.

In Error to the Supreme Court of the Philippine Islands.

Proceedings had in the Court of First Instance of the City of Manila, Philippine Islands, and the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,
versus
LING SU FAN, Defendant and Appellant.

Be it remembered:

That heretofore, to-wit, on the twentieth day of December, 1906, in the Court of First Instance of the City of Manila, Philippine Islands, came one, W. H. Polley, and filed in the Clerk's Office of said Court a complaint signed and sworn to by him, against Ling Su Fan, which complaint is in the words and figures following, to-wit:

4 "*Complaint.*

THE UNITED STATES, Plaintiff,
vs.
LING SU FAN, Defendant.

Attempted Exportation from the Philippine Islands of Philippine Silver Coin.

The undersigned accuses Ling Su Fan of the criminal offense of attempting to export Philippine silver coins from the Philippine Islands contrary to law, committed as follows:

That on or about the 12th day of December, 1906, in the City of Manila, Philippine Islands, the said Ling Su Fan was freight clerk, supercargo, comprador, and person in charge of all shipments of freight on board the steamship "Taming," which said steamship "Taming" was then and there about to depart from the port of Manila, Philippine Islands, to the port of Hongkong; that the said Ling Su Fan did then and there wilfully, unlawfully, and felon-

iously, place, conceal and hide the sum of twenty thousand six hundred (20,600) pesos in Philippine silver coins coined by authority of the Act of Congress approved March 2, 1903, in his stateroom on board the said steamship "Taming" with the intent of exporting the said Philippine silver coins from the Philippine Islands to the port of Hongkong, and did then and there attempt to export the said Philippine Silver coins from the Philippine Islands to the said port of Hongkong;

Contrary to the provisions of Act No. 1411 of the Philippine Commission.

(Signed) W. H. POLLEY.

Subscribed and sworn to before me and in my presence,
5 in the city of Manila, P. I., this 20 day of December, 1906, by W. H. Polley.

(Signed) A. S. CROSSFIELD,
Judge, Court of First Instance.

Witnesses.	Address.
W. H. Polley,	Custom House, Manila, P. I.
William Rankin,	do.
First Officer Taming,	S. S. Taming.
Juan Lankin,	Custom House.

AC/OL—12-20-06."

Afterwards, to-wit, on the twenty-eighth day of December, 1906, the defendant Ling Su Fan was arraigned — said Court of First Instance before the bar of said Court and thereupon and then and there presented to and filed with said Court his, said defendant's, demurrer to the complaint filed against him in this cause, which said demurrer is in the words and figures following, to-wit:

("*Demurrer.*)

Now comes Ling Su Fan, the accused in the above entitled cause, through his undersigned counsel, and demurs to the complaint filed against him herein and for causes of demurrer respectfully shows:

6 1. That said complaint does not conform substantially to the prescribed form.

2. That the facts charged do not constitute a public offense.

3. That the said complaint is contrary to the provisions of the XIV Amendment of the Constitution of the United States of America and also contrary to paragraph I of Section V of the Act of Congress of the United States of America dated July 1st, 1902.

Wherefore, the defendant herein prays the Court that the said complaint be dismissed and that he, said defendant be discharged from custody and arrest.

Manila, P. I., December 28th, 1906.

(Signed) LIONEL D. HARGIS,
(Signed) C. W. O'BRIEN,
Attorneys for Defendant, 18 Plaza Cervantes, Manila.

Received Copy.
(Signed) JESSE GEORGE,
Ass't Pros. Att'y.

That, thereafter, on said same twenty-eighth day of December, 1906, and after consideration by said Court of First Instance of said defendant's demurrer last hereinabove appearing, said Court did, under order, overrule said defendant's demurrer, which said order is in the following words and figures, to-wit:

7 "*Order.*

This case is before the Court for hearing the demurrer to the complaint presented by the defendant.

After examining the demurrer and the complaint, and giving the same due consideration, I am of the opinion that the grounds of demurrer are not well taken.

It is therefore ordered that the demurrer be, and it is overruled.

Manila, P. I., December 28th, 1906.

(Signed) A. S. CROSSFIELD, *Judge.*"

That thereafter, on said same twenty-eighth day of December, 1906, the said defendant being present in said Court of First Instance with his said Counsel, Messrs. Lionel D. Hargis and C. W. O'Brien, did plead not guilty of the offense as charged against him, said defendant, in said complaint.

Afterwards, to-wit, on the fourth day of January, 1907, the said defendant, Ling Su Fan, was tried before the Honorable A. S. Crossfield, the Judge of the Court of First Instance of the said City of Manila, Philippine Islands, without a jury, and the following evidence in said cause was had and taken:

8 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Part I.

Before Judge Crossfield.

Criminal Case No. 2947.

THE UNITED STATES
vs.
LING SU FAN.

Proceedings.

January 4th, 1907.

Mr. Jesse George, Assistant Prosecuting Attorney, and Mr. R. D. Blanchard, Assistant Attorney General, appeared in behalf of the Government; Mr. Lionel D. Hargis and Mr. C. W. O'Brien on the part of the defendant.

W. H. POLLEY, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. W. H. Polley.
Q. Where do you live?
A. No. 7 Calle San Fernando, San Nicolas.
Q. Where were you employed on the 12th day of December, 1906?
A. Customs Secret Service.
Q. Do you remember to have boarded the steamer "Taming" on that day for any purpose?
A. Yes, sir.
9 Q. What purpose?
A. To search the comprador's room for silver Conant money.
Q. Where is that comprador now?
A. In the court room.
Q. You mean this accused?
A. Yes, sir.
Q. State to the Court what you found?
A. There is a bunk in the state room of the comprador, and at the foot of it a box of about two and half or three feet in height covered by a cushion, making a kind of sofa, and on lifting the cushion and getting into the box I found money, and took out a package and counted it, and it contained fifty silver pesos. I asked the comprador if all the packages were the same and how much he had, and he said 20,600 pesos all in silver.
Q. What kind of money was it?
A. Conant.
Q. Was it coin?
A. Silver pesos.
Q. What do you mean by Conant money?
A. Philippine Currency.
Q. Regular silver coins, regularly coined for the Philippine Islands?
A. Yes, sir.
Q. What, if any, further conversation did you have with this Chino in relation to this money?
A. I asked him where he got the money, and at first he seemed to know nothing about it. Then he said that it was brought aboard by some Filipinos, and that it came in two different launches, but that he did not know who the Filipinos were. I asked him
10 what he was going to do with this money, and he said it was for some party in China, but he did not know who. Then afterwards he again denied knowing anything about who brought the money on board.
Q. Was this vessel about to sail for China?
A. Yes, sir, about fifteen minutes after I started to search the room the vessel sailed. They were ready I believe about five o'clock,

but were detained a few minutes to allow us to get the money off the ship.

Q. Where was she going to sail for?

A. Hongkong.

Q. Had she already cleared?

A. Yes, sir.

Q. What was done with the money?

A. It was taken to the office of the Customs Secret Service and kept over night, and the next afternoon it was turned over to the Treasury Department.

Q. Where was this vessel when you found the money?

A. Alongside the breakwater, at the regular buoy.

Q. In the harbor of Manila?

A. Yes, sir.

Q. Within the three mile limit?

A. Yes, sir.

Q. Who was present, if any one, when you found this money?

A. The Chino and a Filipino Secret Service man named Juan Lankin, and the first officer of the ship was looking into the room.

Q. Do you know if Captain Oughterbridge had any talk with this Chino after the money was found?

A. Yes, sir.

11 Q. Did you hear the conversation?

A. Yes, sir.

Q. Can you remember what it was?

A. I can remember part of it.

Mr. HARGIS: I object to the witness testifying to the conversation unless he can give the whole of it.

The COURT: Objection overruled.

Mr. HARGIS: Exception.

A. The Captain asked him where he got the money and he said at first that it was brought aboard by some Filipinos and put in his room when he was not there, and that it came in two different launch loads. The Captain then told him that the best thing for him to do was to tell a straight story, that it might help him out.

Q. That was after he had said that the Filipinos had brought the money?

A. Yes, and after he had said that he did not know who the Filipinos were.

Q. Then what did the Captain say?

A. He told him that he had better tell a straight story to help himself out, and not be trying to lie out of it.

Q. Anything else?

A. That is the substance of what the Captain said on questioning him about where he got the money and what he was going to do with it.

Q. Was there any promise or inducement held out to him by you, or any one in your presence or hearing, or any threats, menaces or violence used in order to induce the defendant to make any statement to you in relation to this money?

12 A. None whatever.

Q. This conversation was voluntary on his part?

A. Yes, sir.

Q. Do you remember anything said about the key to that stateroom in any of these conversations with the Chino?

A. The Chino had the key when I called him and opened the room himself, I do not remember anything being said about the key otherwise.

Q. Did this accused make any statement to Captain Oughterbridge in your hearing as to what he intended to do with this money?

A. I could not say that he did.

Mr. GEORGE: That is all.

Cross-examination by Mr. HARGIS:

Q. Was this conversation carried on through the medium of an interpreter?

A. No, sir, there was no interpreter.

Q. Did this man speak English?

A. He spoke Pidgin English fairly well, so that he could be understood.

Q. Just state his exact words when you asked him where he got this money in his state room?

A. He stated that the money was brought aboard by some Filipinos.

Q. That is what he said?

A. Yes, sir.

Q. Those were the exact words used?

A. The exact words as far as I can remember were that the money was brought aboard by some Filipinos, but he did not know who they were.

13 Q. Who were present at that time?

A. I was, and Juan Lankin and the first officer of the ship, and I believe the Captain, but I am not quite certain about the Captain being there.

Q. And they all heard this conversation?

A. I think so; this Filipino Juan Lankin understands some English, but I do not know whether well enough to have understood everything was said, or not.

Q. You say that he said the money was brought aboard by some Filipinos but that he did not know who they were, and that afterwards he made some other statement; what was that other statement?

A. Later on he stated that he did not know how the money got on board, or how it got in his room.

Q. Was there any further statement?

A. Nothing further.

Q. So the last statement he made regarding the money was that he did not know how it got there?

A. Yes, sir.

Q. And you did not use an interpreter at all?

A. No, sir.

Q. Did he say anything about seeing the money placed in his room, or seeing the Filipinos?

A. He seemed to know very little about it, he simply said it was put there by some Filipinos but that he did not know who they were.

Q. Where did you get your information?

A. From the Chief of the Secret Service of the Custom House, who ordered me to search the room, I don't know where he got his information.

14 Q. Was that Mr. Manion?

A. Yes, sir.

Q. Do you know who the man was who gave the information?

A. No, sir.

Q. Who were present when the Captain and the defendant had their conversation, and where was it?

A. The Captain was in the doorway and the Chino inside his room.

Q. Who else was present?

A. The first officer and an inspector were standing right near, I don't know whether they were close enough to hear or not, and this Filipino (indicating Juan Lankin) was also there, in the room all the time, and I was present.

Q. During all the conversation?

A. All that he had in the room, what he had outside I do not know.

Q. You were in the room, were you?

A. Yes, sir.

Q. And you did not take part in that conversation at all?

A. Not while the Captain was talking.

Q. But you did in the conversation previous to that?

A. Yes, sir.

Mr. HARGIS: That is all.

JUAN LANKIN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?

A. Juan Lankin.

15 Q. Where do you live?

A. No. 75 Calle San Nicolas.

Q. What is your occupation?

A. In the Secret Service of the Custom House.

Q. Do you know the accused?

A. Yes, sir.

Q. Where did you know him?

A. The first time I went out to the ship is the first time I ever saw him.

Q. State what took place there the first time you ever saw him?

A. I and the second chief, Mr. Polley, went to his cabin on board of the "Taming."

Q. When?

A. On Tuesday, I don't know whether it was the 11th or 12th of December last.

Q. Where was this vessel?

A. In the bay.

Q. Tell us what took place at his room?

A. We saw money in a place in his room on board.

Q. What money did you see?

A. Philippine Currency rolled up.

Q. How was it rolled up?

A. In Japanese paper.

Q. What kind of Philippine Currency was it?

A. Conant.

Q. Silver, or gold, or what?

A. Silver.

Q. What denomination?

A. Philippine silver pesos.

16 Q. Where was this money: in what part of his cabin?

A. At the end of his bunk was a place where the money was hid, underneath.

Q. Do you remember how many rolls of paper there were containing this money?

A. Four hundred and twelve packages.

Q. Do you know how much was in each roll?

A. Fifty pesos in each roll.

Q. How do you know that?

A. Because we counted it.

Q. Did you count all the rolls?

A. Only one.

Q. State what, if anything, was said by the Chino and by Mr. Polley to the Chino when you found that money there?

A. Mr. Polley asked him to whom this money belonged, and the comprador answered that that money belonged to a person here in Manila but that he did not know who the owner was, and that it was brought on board by some Filipinos to be delivered in Hongkong.

Q. Anything else?

A. He said he did not know who the Filipinos were who brought the money on board.

Q. Did he say anything about how much money there was?

A. Yes, sir, he stated that there were four hundred and twelve packages, containing in all twenty thousand and six hundred pesos.

Q. Did he say anything more about how the money came on board?

A. Nothing more only that he said a Filipino took the money on board.

17 Q. Who were present when you and Mr. Polley found this money?

A. The Captain, the first officer, the inspector and the Customs Guard.

Q. Do you know whether all these men heard the conversation or not?

A. Yes, sir, they heard it.
Q. In what language was this conversation you heard?
A. In English.
Q. Do you understand English?
A. Yes, sir, to some extent.
Q. Did you understand what was said there by Mr. Polley and the Chino?
A. Yes, sir.

Mr. GEORGE: That is all.

Cross-examination by Mr. HARGIS:

Q. When Mr. Polley asked this defendant where he got this money, what were the exact words he used?
A. Mr. Polley asked this comprador to whom this money belonged and who took it on board. He said the Filipinos took it on board. He was then asked whether he knew the owner, and he said that he knew the owner in Hongkong but in Manila he did not know.
Q. Was there a Chinese interpreter present?
A. No, sir.
Q. Did you not have an interpreter on board from the Custom House?
A. No, sir.
18 Q. Did you hear any conversation between the Captain and the accused?
A. No, sir.
Q. Were you present there all the time that Mr. Polley was?
A. I was present when Mr. Polley took the money and counted it and took it from that place.
Q. Were you and Mr. Polley together all the time?
A. Yes, sir.
Q. And you were present during all the conversation which was had?
A. Yes, sir, in the room.

Mr. HARGIS: That is all.

E. I. TOTTEN, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. E. I. Totten.
Q. Where do you live?
A. On Calle Concepción.
Q. What is your official position?
A. Boarding Inspector, in the bay, for the Custom House.
Q. Do you know whether or not you boarded the steamer "Taming" on its arrival at Manila on or about December 7th, 1906?
A. I did.
19 Q. Did you board this vessel in your official capacity as Boarding Inspector?
A. Yes, sir.

Q. What were your duties on boarding this vessel on its arrival?

The COURT: Find out what was done.

Q. Did you make an examination of the vessel on its arrival?

A. I remember I questioned the Captain, as is usual, but I made no particular examination of the vessel.

Q. Did you make an official report of your inspection of this vessel on this occasion?

A. You have the record, sir.

Q. Is this the record which I have in my hands?

A. Yes, sir, these are the questions which I put to the Captain, and the answers.

Q. State whether or not any specie or any money was brought in by that vessel from Hongkong on December 7th, when the vessel arrived?

A. The Captain stated that he had no money on board.

Mr. HARGIS: I object, and ask that this be stricken out.

The COURT: Objection sustained.

Q. From what port did this vessel arrive?

A. From Hongkong.

Q. Is that a foreign port?

A. Yes, sir.

Q. Did you find any specie on board when the vessel arrived in Manila?

A. No, sir.

Q. No money of any kind?

Mr. HARGIS: Objected to as immaterial, and I ask that the previous answer of the witness be stricken out.

The COURT: Objection sustained, and it may be stricken out: if necessary you can recall the witness for the purpose of rebuttal.

Mr. GEORGE: I withdraw this witness and am satisfied to have this evidence expunged from the record.

GEORGE PINKHAM, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?

A. George Pinkham.

Q. ——.

—. No. 32 Calle Norzagary.

Q. What is your occupation?

A. Custom House Inspector in Manila.

Q. Do you know the accused?

A. Yes, sir, I know him.

Q. Where did you know him?

A. I had been on board the boat "Taming" several times, as inspector, and this accused was comprador of that steamer.

Q. Do you remember having been on board the "Taming" on the 12th day of December, 1906, in the city of Manila?

A. I do not know whether it was the 12th or not, I was inspector on board her for five days on that trip.

Q. Do you remember anything extraordinary occurring while you were inspector on that occasion?

21 A. There was this seizure of money.

Q. What money?

A. 20,600 pesos.

Q. Where was that money seized?

A. In the comprador's room.

Q. In the defendant's room?

A. Yes, sir.

Q. Tell us what you know about it?

A. Mr. Polley and a secret service man came on the day before with the launch and saw me, and asked me where that man's room was.

Mr. HARGIS: I object to the admission of any conversation between this witness and Mr. Polley.

The COURT: Objection overruled.

Mr. HARGIS: Exception.

A. He came on before in a Customs launch and asked me where this comprador's room was, and I told him that it was right underneath where I was standing.

Q. Did Mr. Polley come again?

A. The next afternoon about the time of the sailing of the steamer he asked me again where was that comprador's room, and I pointed to it and said that there was the comprador's room up that little alley way, and he said "all right," and in about a half minute he came out and said that he had found it. I asked him what he had found and he said he had found a lot of money. Then I went in and saw all the money stacked up in the inside of a big box. I then asked the Chino how he got this money on board, and he was so much frightened that he did not answer. Then Mr.

22 Polley said to me that he had told him that it had come on board while he was absent, that when he came back the money was in there.

Mr. HARGIS: I object to the conversation between Mr. Polley and the witness.

The COURT: Confine yourself to what you saw, the rest may be stricken out.

Q. Did the Chino say anything to Mr. Polley when you were there?

A. I was the one to question, and then he spoke up.

Q. And did he deny afterwards saying anything?

A. I asked him about it, and he told me the same thing, that he went out and when he came back he found this money in there, and by this time Captain Oughterbridge came down.

Q. And did Captain Oughterbridge have any conversation with the accused in your presence?

A. Yes, sir, Captain Oughterbridge asked him something and he

did not answer, and then after being pressed he said that the money was brought on while he was out of the room, that he did not know who was the owner of the money. The Captain then said: "Why this is a ton of money, you can't tell me a story like that." Then the Chino said it was brought on board by several Filipinos in several boats or launches, but that he did not know who they were.

Q. Do you remember his having said anything else about this money, how it came there, or what he was going to do with it?

A. He said it did not belong to him, that is about all. Then Captain Oughterbridge wanted to know what he was going to
23 do with it? and he said that he did not know.

Q. State whether or not the "Taming" had already been cleared?

A. Yes, sir, I had the sailing orders in my pocket, she was cleared for Hongkong, and was supposed to have been on the way.

Q. What time was it when this money was found?

A. I should say about five o'clock, the passengers were on board, and the Captain was on the bridge, and the vessel was ready to leave, I believe she was scheduled to leave at four o'clock, but it took a little time to get the money off.

Q. What was done with this money?

A. Mr. Polley took possession of it and it was carried to the Custom House.

Mr. GEORGE: That is all.

Cross-examination by Mr. HARGIS:

Q. You say that the defendant was very much excited while you were questioning him?

A. Yes, sir, he seemed excited.

Q. And Mr. Polley told you that he was so much excited that he could not speak while he was talking to him?

A. Mr. Polley did not tell me that, but I could see that he was excited.

Q. Do you know whether or not Mr. Polley had any conversation with him whatever?

A. Yes, sir, Mr. Polley told me that he had.

24 Q. How long was that conversation?

A. From the time that Mr. Polley went into the room until he came out again, about a half a minute.

Q. Could he have had all this conversation in that time?

A. I do not know.

Q. Were you present during all the conversation that took place between the Captain and the defendant?

A. Yes, sir.

Q. And you put all the questions to the defendant immediately after you went into the room?

A. Yes, sir, Mr. Polley did not put any questions, only Captain Oughterbridge and myself, the Captain was the first one who asked him where in the deuce did all this money come from, and the Chino then said that when he was out of his room some body had put the money in there, and that he did not know who they were.

Q. In what language did he speak?

A. He spoke pidgin English, and said that he went outside and came back and when he came back he found the money there.

Q. Did he say to whom it belonged?

A. He said it did not belong to him.

Q. Did he specify in any way or hint as to who the money belonged to?

A. That is all he said, and that he knew the owner in Hongkong.

Q. And that he did not know the owner in Manila?

A. Yes, sir, he said he did not know to whom the money belonged, that it was not his and that he did not know who put it in his room, that he did not know anything about it.

25 Redirect examination by Mr. GEORGE:

Q. Did he say anything about the time that money came on board?

A. He said it was on Saturday.

Q. And on what day of the week was this occurrence?

A. The steamer sailed on Tuesday, and shortly before five o'clock in the afternoon was when this happened.

Recross-examination by Mr. HARGIS:

Q. You say this was in reply to questions of Captain Oughterbridge?

A. Yes, sir, that was about the last story he put out. At first he said he did not know anything about the matter, and afterwards he said it came on board in launches and cascos, etc.

Q. Were you on board that steamer all the time?

A. Yes, sir.

Q. How many inspectors had you there all the time with you in charge, on board?

A. Only one beside myself, but there were four or five Filipinos guards to assist, who were there to check the cargo, and doing guard duty at the same time.

Q. And those guards are supposed to report any cases of importance?

A. Yes, sir, they understood so; of course I did not personally instruct them, but every one knew it.

Q. So all you know about this money coming on board was that you found it in this comprador's state room, and the conversation had with him?

A. Yes, sir.

26 Q. And you do not know of your own knowledge when the money came on board?

A. No, sir, if I had known it I would have seized it myself.

Mr. GEORGE: Do you remember who the boarding officer was?

A. Mr. Totten.

BARRINGTON KING WEST, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. Barrington King West.
Q. Where do you live?
A. Manila.
Q. What is your occupation?
A. Secret Agent in the Customs Service.
Q. Do you remember the occasion of some silver coin having been found on the steamership "Taming"?
A. Yes, sir.
Q. Did you have anything to do with that money yourself?
A. Yes, sir, I counted it when it was brought ashore at the Custom House.
Q. About what time was this when you counted this money?
A. About December 11th, as near as I can recollect.
Q. From whom did you receive the money?
A. From Mr. Polley.
Q. What kind of money was it?
A. It was supposed to be Conant money done up in packages.
Q. Did you see the money after you received it?
27 A. I saw the packages.
Q. Did you count the money?
A. I counted the packages.
Q. How much was contained in the package you counted?
A. Fifty silver pesos.
Q. Do you remember how many packages there were?
A. Four hundred and twelve packages.
Q. What kind of money was this?
A. Silver Conant money.
Q. What do you mean by Conant money?
A. Silver pesos.
Q. Philippine Currency?
A. Yes, sir.
Q. Did you ascertain that all these packages contained silver pesos?
A. Yes, sir, on the next morning.
Q. What was done with that money?
A. It was first of all brought to the Custom House.
Q. What was done with it afterwards?
A. It was taken to the Treasury Department.
Q. State whether or not all this money was counted in your presence?
A. Yes, sir.
Q. And how much did it come to?
A. 20,600 pesos.

Mr. GEORGE: The Government rests.

The hearing was then suspended until January 7th, for the purpose of enabling the defense to present the evidence of the captain of the "Taming".

28 JANUARY 7TH, 1907.

Pursuant to adjournment the case was called this a. m., with the same appearances.

Mr. HARGIS: We offer in evidence an insurance policy covering this money in controversy in this suit, and ask that it be marked Exhibit D. 1.

Mr. GEORGE: Objected to as incompetent and immaterial.

The COURT: Objection sustained as to incompetency, but overruled as to immetariality.

ARTHUR WILLIAM OUGHTERBRIDGE, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. HARGIS:

Q. State your name?

A. Arthur William Oughterbridge.

Q. What is your occupation?

A. At the present time master mariner of the steamer "Taming" of the China Navigation Company of London.

Q. Between what ports do you ply?

A. Hongkong and Manila.

Q. Where was this vessel on the afternoon of the 12th day of December, 1906?

A. She was in Manila the day of the trouble, outside the breakwater.

Q. Do you remember the occasion of the seizure of some twenty thousand pesos?

A. Yes, sir.

29 Q. Did you have any conversation with the comprador at the time of the seizure?

A. I was in my room reading, and the first officer, who is now in the courtroom, came up and said that there was trouble with the Customs, to come and see about it. I said all right, what is it, and the first officer said that they had found a lot of money in the comprador's room, that he had never seen so much in his life. So I went down, and putting on my official look, because it does not pay my firm to have trouble with the Customs or anywhere else, I said: "What is this you are up to," and the comprador began to jabber and chaw and seemed to lose his head and did not know what he was talking about. One moment would say that the money came on board in Hongkong, and then again that someone must have put it in his room here while he was in the other end of the ship. I could make nothin out of what he said.

Q. Who were present when this conversation was going on?

A. The secret service officer and the comprador of course.

Q. So he made different statements to you?

A. All sorts of statements, yes, sir.

Mr. HARGIS: That is all.

Cross-examination by Mr. GEORGE:

Q. Do you remember his stating that it came on board in a launch and was brought there by some Filipinos?

A. Yes, sir.

Q. How long did this conversation last?

A. About five minutes.

30 Q. Did you not tell him to tell a straight story?

A. I did the best I knew how to get him to tell me how he came by the money.

Q. What was the last statement he made?

A. I could not say.

Q. Don't you remember his last statement was that some Filipinos brought it on board?

A. He said that among other things, that while he was in the other end of the ship somebody must have put it in his room.

Q. Don't you remember that his last statement was that some Filipinos must have brought it aboard, did he not say finally that some Filipinos brought it on board?

A. Let me think, I would not commit myself to that.

Q. Don't you remember his making that statement?

A. Yes, amongst other things.

Q. Did you know of his bringing this money from Hongkong?

A. No, sir, it was not on the bill of lading.

Q. Had you known would you have put it on the bill of lading?

A. No, sir, I should have seized it pending the decision of my firm, I have nothing to do with the Customs. I should have informed the Customs and also my agents, put everything in the hands of my agents.

Q. If you knew the money had come from Hongkong?

A. If I knew that the money was on board the ship without a bill of lading: however some bills have a special rate for this kind of shipment, I think one-half per cent.

Q. Did this comprador know that he was not permitted to carry money on board the vessel?

31 A. I should say so, certainly.

Q. Did he or any one else exhibit any insurance papers in relation to this money?

A. If I had been shown such papers I should have known the money was on the ship and should have seized the money without any further to do about it. I represent my company, my company pay me and I try to be their faithful servant. You see in order to make it *bona fide* as far as my firm is concerned there should have been an attested and stamped bill of lading of Butterfield and Swire.

Mr. HARGIS: That is the rule of your firm?

A. Yes, sir.

Q. That is no law?

A. No, only a rule of the Company, and the rule of the Company is my law.

Mr. GEORGE: Do you know the requirements of the Customs in relation to that?

A. We have no customs in Hongkong, it is a free port.

Q. You have a man who looks after the affairs of vessels there?
A. Only our firm, everything our own free will, there are no customs in Hongkong.

Mr. GEORGE: That is all.

LING SU FAN, called in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. HARGIS:

Q. State your name?
A. Ling Su Fan.
32 Q. Where do you live?
A. At Hongkong.
Q. What is your business.
A. Comprador.
Q. On what boat?
A. The "Taming".
Q. How long have you been on board the "Taming"?
A. Three years.
Q. Were you on the "Taming" during all of November of last year?
A. Yes, sir.
Q. Do you know this man here (indicating a Chino in the court room)?
A. Yes, sir.
Q. What is his name?
A. Juan On Hing.
Q. How long have you known him?
A. About ten years.
Q. How long have you known him in Manila?
A. One or two years.
Q. What does this man do in Manila?
A. He is a broker.
Q. What kind of a broker?
A. A money broker.
Q. Did you see this man last November in Manila?
A. I saw him all the time.
Q. Where did you see him?
A. He came on board the ship.
Q. You did not go on shore?
33 A. No, sir.
Q. Why not?
A. Because I cannot.
Q. Did you have any business with this man?
A. Yes, sir.
Q. When?
A. In November.
Q. What sort of business did you have?
A. He was to send me old Spanish money, I was to pay him 82 pesos for 100.
Q. Anything else?

A. And I was to give him 97 pesos for 100 pesos, Mexican money.
Q. Then what did you do?
A. He said he had more than 20,000 pesos.
Q. And did you take this to Hongkong?
A. No, it was here, and when I went back to Hongkong I went to see my friend.
Q. Who is your friend?
A. Wong Tai.
Q. What business is he in?
A. In the piece goods business.
Q. What did you tell Wong Tai when you went back?
A. I said there was plenty of money to be exchanged.
Q. What did Wong Tai do?
A. He asked me how much and I told him.
Q. You told him that you could buy 100 pesos, Spanish money, for 82 pesos Conant, and 100 pesos, Mexican money, for 97 pesos Conant?
A. Yes, sir.
34 Q. What did Wong Tai say about this?
A. He asked me how much there was of this money and I said more than 20,000 pesos. Then he said he would give me a chance to make a little money: That he would give me one peso on every hundred pesos, and that he would give me 20,600 pesos to bring to Manila, to buy that money.
Q. Did he give you 20,600 pesos?
A. Yes, sir.
Q. When you got to Manila what did you do?
A. Juan On Hing came to see me and he said that the money was dearer, that he could not get it at the same price it was before, and that he wanted 86 pesos Conant for 100 pesos of the Spanish money.
Q. Then what did you do?
A. I told him I could not buy at that price.
Q. Did you ever see this insurance policy before (showing to witness)?
A. Yes, sir.
Q. Where did you see it?
A. It was shown me by Wong Tai.
Q. When did he show these papers?
A. Before the money came on the ship he told me that he had got the money insured.
Q. And he gave you these papers?
A. When I came to Manila.
Q. And when you came to Manila you were arrested?
A. Yes, sir.
Q. Do you know this man here (indicating Mr. Polley)?
A. Yes, sir, he took the money.
35 Q. Did you talk with this man when he took the money?
A. Yes, sir, he asked me how much there was and I told him 20,600 pesos.
Q. What else?
A. I told him the money came from Hongkong, and then he said he would take it.

Q. Did you have a talk with Captain Oughterbridge about it?
A. Yes, sir.

Mr. HARGIS: That is all.

Cross-examination by Mr. GEORGE:

Q. From whom did you get this money in Hongkong?
A. From Wong Tai.
Q. When did you get the money?
A. December 3rd or 4th.
Q. How much money did you get from Wong Tai?
A. 20,600 pesos.
Q. Just that?
A. Yes, sir.
Q. And did you see these insurance papers before you got the money or afterwards?
A. He took the money on the ship and after that he brought the papers.
Q. Did you tell the Captain you had this money?
A. No, sir.
Q. Why not?
A. I did not think there was any need of it.
Q. But you know you had no right to bring money in, do you not?

Mr. HARGIS: Objected to as incompetent and immaterial,
36 and not proper cross-examination.
The COURT: Objection sustained.

Q. Did you take any invoice before the American Consul at Hongkong before you got this?

Mr. HARGIS: Objected to as incompetent and immaterial.
The COURT: Objection sustained as immaterial.

Q. How did you get this money on board the ship in Hongkong, who brought it?
A. Wong Tai.
Q. How did he bring it?
A. He brought it in bags, one thousand pesos in each bag.
Q. How could he bring it without the Captain seeing him?

Mr. HARGIS: Objected to as incompetent and immaterial.

The COURT: Objection overruled.
A. On December 3rd, he gave me ten bags.
Q. When did he bring the rest?
A. On the morning of December 4th, he gave me 5000 pesos, and in the afternoon 5600 pesos.
Q. Was any body with him when he brought the money?
A. Coolies.
Q. What kind of sacks did the money come in?
A. In gunny sacks.
Q. Did they hid- it?
A. They carried it on their shoulders.

Q. Did the Captain see that money?
A. No, sir, the Captain was on shore.
Q. Did the first officer see that money?
A. No, sir.
Q. Why not?
37 A. I do not know whether he saw it or not.
Q. Did you have these papers when Mr. Polley took this money from you?
A. Yes, sir, he gave me these papers.
Q. What did you do then?
A. He took them away to Hongkong.
Q. When you came back from Hongkong you talked to the Custom House men ashore, did you not?
A. Yes, sir.
Q. Did you have a Chinese interpreter?
A. Yes, sir.
Q. Did you tell the Custom House men that you had these papers of insurance when they questioned you about this money?
A. They did not ask me about the insurance.
Q. I ask you did you tell them about these insurance papers?
A. I was not asked about it.
Q. Then you never spoke about these papers to them?
A. I was not asked.
Q. But you were asked where you got the money?
A. Yes, sir.
Q. And you told them you got it in Hongkong?
A. Yes, sir.
Q. And you did not speak about these insurance papers?
A. I was not asked about the insurance papers, I was asked about where I got the money, and I said from Hongkong.
Q. Did you have these insurance papers with you then?
A. Yes, sir.
Q. And you did not show them to the Custom House men?
A. No, sir.
38 Q. When you brought this money here you knew that Conant money was worth in Hongkong as bullion one peso and nine cents?
A. I did not know.
Q. How much was Mexican money worth in Hongkong?
A. 97 pesos Conant for 100 pesos Mex.
Q. You knew that one peso Philippines Currency, was worth a peso and nine cents in Hongkong?
A. 95 cents.
Q. But the bullion in the Philippines peso was worth a peso and nine cents in Hongkong?
A. 95 cents.
Q. If you had this money and melted it how much could you get for the silver?
A. 95 cents.
Q. Is it worth more as money than when melted?

Questions by the COURT:

Q. Do you know what bullion is?
A. No, sir.
Q. When you have silver in bars, that is bullion.
A. Yes, sir.
Q. Now when this silver in the Philippine peso is melted up is it worth more than when in money?
A. The other money more go. (sic)

Recross-examination resumed by Mr. GEORGE:

Q. Who told you it was worth more?
A. Myself.
Q. Did Wong Tai know that it was worth more?
A. I do not know.
Q. Did you tell the officers who seized the money that it was brought on board by Filipinos?
A. I did not say so.
Q. What did you tell Mr. Polley and Captain Oughterbridge when this money was found in your bunk?
A. That it came from Hongkong.
Q. But you told them the money was brought on board by Filipinos?
A. No, sir, I said there were 20,600 pesos when they asked me.
Q. Then you were asked where you got the money?
A. No, sir.
Q. Then the Captain asked you?
A. Yes, sir.
Q. And you told the Captain you got the money in Hongkong at first, and then you afterward told him you did not know about it?
A. I say Hongkong and the Captain say no, and then I say I do not know.
Q. Then you told him that some Filipinos brought it on board?
A. No, sir.
Q. They were Filipinos who brought it on board?
A. I got it in Hongkong, and I said so when he talked with me.

Mr. GEORGE: That is all.

Redirect examination by Mr. HARGIS:

Q. Who is the owner of this money?
A. Wong Tai.
Q. And you say that Wong Tai showed you these insurance papers on the 3rd day of December?
A. Yes, sir.
Q. When was the first time you saw these papers?
A. When the ship was about to sail.
Q. What date?
A. On the 4th of December.
Q. And you saw a copy the day before?
A. Yes, sir.

Mr. HARGIS: That is all.

JUAN ON HING, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. HARGIS:

Q. State your name.
A. Juan On Hing.
Q. Where do you live?
A. No. 109 Calle Rosario.
Q. What is your business?
A. Money broker.
Q. How long have you been in business in the city of Manila?
A. I came to Manila about eight years ago.
Q. How long have you been in the money brokerage business?
A. Four months.
Q. Do you know the accused?
A. Yes, sir.
Q. How long have you known him?
A. A long time.
Q. How long has he been working on the steamer "Taming"?
41 A. I do not know, but I knew him in Hongkong.
Q. Did you ever go on board the "Taming" to visit the accused?
A. Yes, sir.
Q. When did you first go to visit him?
A. Very often.
Q. Did you have any business with him?
A. Yes, sir.
Q. When did you first have business with him?
A. Many months.
Q. Do you know anything about a big lot of money being seized by the Government?
A. Yes, sir.
Q. When was it seized, if you know?
A. On Tuesday when the ship was about to leave.
Q. Did you have any agreement with this defendant about that money?
A. Yes, sir, I arranged with him previously, I asked him to bring some money over to buy Spanish and Mexican Currency.
Q. When did you make this arrangement with him?
A. On the 26th day of November.
Q. What arrangements did you make with him?
A. I told him I had about twenty thousand pesos of this old currency, and asked him to bring money over to buy it.
Q. What kind of money did you ask him to bring over?
A. I only told him to bring the money.
Q. What were your arrangements with him?
A. I told him I would give him 100 pesos of Spanish money for 82 pesos Conant.
Q. What other arrangement was there?

42 A. That is all.

Q. Did you make any arrangement about Mexican money?

A. Yes, sir, Mexican money and Alfonso and Spanish dollars.

Q. What arrangement did you make about Mexican money?

A. I was to give him 100 pesos for 97 pesos Conant.

Q. When this boat came back the next time did you go on board?

A. The next time after the arrival of the ship I went on board.

Q. Did you get this money?

A. No, sir, I told him that the price of the old coin had gone up.

Q. How much had it gone up?

A. That they wanted 86 pesos Conant for 100 Spanish pesos, and 101 pesos Conant for 100 pesos Mexican Currency.

Q. Was that the reason you did not make the trade?

A. He told me that I had agreed to such and such a rate, and wanted to know why I raised it so high.

Q. Then you did not buy the money?

A. No, sir, he told me that he had no authority to buy at that rate.

Q. Did you see the money on board the "Taming" when you went out there?

A. He told me that he had brought the money over, but I did not see it.

Q. Do you know whether or not any Mexican money was shipped to Hongkong on that voyage of the "Taming"?

A. Yes, sir.

Mr. HARGIS: That is all.

43 Cross-examination by Mr. GEORGE:

Q. You said you had 20,000 pesos in old coin when you first entered into negotiations with the defendant?

A. I told him about 20,000 pesos, or little over.

Q. And you had that coin, had you?

A. No, sir.

Q. Did you not tell him you had that coin and that you wanted to sell it?

A. I told him that some people promised to furnish me with such an amount.

Q. Then you really did not have 20,000 pesos in Alfonso and Mexican coin to sell?

A. No, sir, I was waiting on a man who promised to let me have the money.

Q. Who had this 20,000 pesos of Alfonso and Mexican Currency to sell?

A. A native.

Q. What is his name?

A. I do not remember his name, but he came very often to my place.

Q. Was he a Filipino?

A. Yes, sir.

Q. And you cannot remember his name?
A. No, sir.
Q. Of course you know where you can find him?
A. No, sir, I only knew him because he came to see me very often.
Q. Do you know where he lives?
A. No, sir.
44 Q. Will you just describe that Filipino to us?
A. If he came to me I would recognize him.
Q. Give us the best description you can?
A. He has a long face.
Q. Is he a mestizo or a full blooded Filipino?
A. A native Filipino.
Q. Does he talk Spanish?
A. He talks Filipino.
Q. Do you talk Filipino?
A. He spoke to me and I understood about the rates.
Q. When was the last time you saw that Filipino?
A. He came to me the previous trip, and then he came after the next trip again.
Q. Then he came to see you twice?
A. Three times.
Q. Have you not seen him more than three times?
A. More than three times, very often.
Q. You saw him three times about this money?
A. No, sir.
Q. How many times did you see him about purchasing this money?
A. First he came the trip before the money was seized, and the next time when the ship arrived I saw him again.
Q. Did he have the Mexican money with him: did he show you the Mexican and Alfonso money?
A. He told me about it very often.
Q. But you did not see him with the money?
A. He did not bring the money.
Q. How did you get aboard this vessel "Taming": did you get permission from the Custom House authorities to go aboard?
45 A. No, sir.
Q. Do you know this American here (indicating Mr. Pinkham)?
A. Yes, sir.
Q. Where did you see him?
A. Very often on board the ship.
Q. Did you pass this officer when you boarded the "Taming" on the 11th or 12th days of December last, when you went to see the defendant the last time about the money?
A. No, sir, I did not see him.
Q. How did you board: did you go up the regular stairway?
A. Yes, sir.
Q. Did you see this officer, or any officer, at the head of the stairs?
A. No, sir, I did not see.
Q. Were there no customs guards there?

A. Yes, sir, some native Filipinos.
Q. Would you know the Filipino guard you saw there?
A. No, sir, I only knew they were customs guards.
Q. Did this officer stop you when you arrived at the head of the stairs to go aboard the vessel?
A. No, sir, I did not see him.
Q. Did any guard stop you?
A. No, sir.
Q. Have you ever gone aboard any other vessel there in the Bay?
A. Yes, sir, many vessels.
Q. You know that before you can pass the guard you must exhibit a certificate, and a Customs officer takes that up, and this pass must be signed by some Customs official?
A. Yes, sir, and I had a certificate that I could show in
46 case of need.
Q. Did any officer ask you to show your ce-tificate?
A. Yes, sir, very often.
Q. But on this last occasion that you went on board the "Taming" did you surrender your certificate to any officer?
A. No, sir, they did not ask me for it.
Q. Did you know the officer or the Filipino guards, or did they know you?
A. There were several of them.
Q. What time of the day was it the last time you went on board?
A. The last time I did not go on board, I was only alongside the ship.
Q. He talked to you over the rail, did he?
A. The last time, yes, sir.
Q. I mean the last time you visited to negotiate about this money, when you told him you could not pay as you had agreed did you go on board the ship?
A. I went on board twice.
Q. When was the last time you went on board the "Taming"?
A. On the same day I went twice, the first time I went up on board and the second time I stayed alongside the ship.
Q. When was it you went on board the ship when you made the first arrangement?
A. About the 8th, when I told him I could not take the money at that rate.
Q. Did you go on board the ship and see the accused when you first spoke to him about selling the money?
A. The first time I went on board was when I told him about the rate being raised.
47 Q. Were you on board the vessel and in defendant's state room at that time?
A. Yes, sir, that was the first time I was in the comprador's room.
Q. And did you go on board after that to see the defendant?
A. The next time he told me to see the native and see whether he would make any reduction in the price.
Q. Did you go on board after that?
A. After that I came back and tried to induce the Filipino to

make better terms, but he persisted in the rate and I was obliged to go back, and that time I stayed alongside the ship.

Q. How did you find the Filipino when you went back, if you did not know where he lived?

A. He promised to wait for me in the house.

Q. In your house?

A. Yes, sir, I told him to wait for me in my house.

Q. When you went back to see the Filipino, did you go on board that day?

A. No, sir, I went alongside the ship and he spoke to me over the rail.

Q. Then you were only on board the "Taming" once, to see this defendant about the money?

A. The first time I went on board I went into his room and he told me that he had brought the money.

Q. Did you go on board once again to see him about this money?

A. One day twice, once I went on board and once I stayed alongside of the ship.

Q. And these are the only times?

48 A. Twice altogether.

Mr. GEORGE: That is all.

Redirect examination by Mr. HARGIS:

Q. How many times did you go on board the boat prior to the trip when the defendant brought the money?

A. Once.

Q. Is that the time you made the agreement with the defendant to bring the money over?

A. Yes, sir.

Q. What kind of a license have you?

A. Here it is (handing to counsel).

Q. What kind of a business do you carry on under that license?

A. Money changing broker.

Q. Do you buy and sell Mexican money all the time?

A. Yes, sir, that is my business.

Q. Is there any one else besides this Filipino you speak of that you do business with in that way?

A. Yes, sir, some Chinos.

Q. Did you have any Mexican money yourself at that time?

A. Yes, sir.

Q. Did you know of anybody at the time you made this agreement with the defendant besides this Filipino you speak of, from whom you could get Mexican money?

Mr. GEORGE: Objected to as irrelevant and immaterial.

The COURT: Objection overruled.

A. Some Chinos.

Q. Who were they?

A. Various.

49 Q. Name some of them?

A. Chan Tay.

Q. Anybody else?
A. Many people.
Q. Can you not tell the names of two or three?
A. Yeng Chi.
Q. Anybody else?
A. Nan Yung.
Q. Anybody else?
A. Various, some I do not remember.

Recross-examination by Mr. GEORGE:

Q. This license is not a money broker's license, it is a stock broker's license.
A. When I got this license I got it for money changing.
Q. Were you doing business under that license as a money broker?

Mr. HARGIS: Objected to as incompetent and immaterial.
The COURT: Objection overruled.

Q. This license you have exhibited, is it not a stock broker's license or certificate?
A. When I went to the Internal Revenue office, I asked them for a license for money changing.

The COURT: Let the record show that the license upon which the witness is transacting business is marked "stock broker's license."

Q. What is Chan Tay's business?
A. Cigar manufacturer.
Q. Is he a money broker also?
A. Yes, sir, he deals in old coin.
50 Q. Has he got a money broker's license?

Mr. HARGIS: Objected to as incompetent.
The COURT: Objection sustained.

Q. Where does he live?
A. I do not remember the street.
Q. In what part of the city?
A. Near Calle Dasmariñas.
Q. What is Yeng Chi's business?
A. I am not very well acquainted with him, I only knew him when he was bringing money, I know him by face only.
Q. Do you know where he lives?
A. I only know his name, I have never been in his house.
Q. Then you do not know his business?
A. I only know his name.
Q. And Nan Yung?
A. The same, I know him by name only, many small brokers bring money in to me.
Q. Do you know his business?
A. I only know that he brought money to me.
Q. Did you ever buy any money from any of these three Chinos whom you have named?
A. Yes, sir.

Q. Did you ever sell any money other than this twenty thousand pesos you attempted to sell?
A. Yes, sir.

Mr. GEORGE: That is all.
Mr. HARGIS: Apart from identifying the documents of insurance, we rest.

51 *Rebuttal.*

GEORGE PINKHAM, recalled by the Government, testified as follows:

Direct examination by Mr. GEORGE:

Q. You have heard what this last witness testified?
A. Yes, sir.
Q. State whether or not you were on board the "Taming" during all the period she remained in port, when this money was found on board that you have testified to?
A. Yes, sir.
Q. When did you board her?
A. When she came in, I think on the 7th.
Q. What were your duties in relation to Chinos coming on board and leaving?
A. When these boats have a Chinese crew on board, no Chinaman from Manila can go on board the steamer unless he has a certificate with his picture on it, and these guards at the head of the gang-way have to inform me if any Chino wants to come on board the ship.
Q. Did this Chino who has just testified go on board that vessel during her stay in port from December 7th to December 12th, 1906?
A. I did not see him.
Q. Ordinarily would you have seen him if he had come on board?
A. Yes, sir.

Mr. GEORGE: That is all.
Mr. HARGIS: No cross-examination.

52 GEORGE FRANCIS LANGFORD, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. HARGIS:

Q. State your name?
A. George Francis Langford.
Q. What is your occupation?
A. First Officer of the "Taming," and holding a master mariner's certificate.
Q. Were you on board the "Taming" when she arrived here on the 7th day of December last?
A. Yes, sir.
Q. Did you see the last Chino who has just testified on the stand?
A. Yes, sir.
Q. Where?

A. On board the ship.
Q. When?
A. I saw him on the trip before last, the first time I was down here.
Q. Did you see him on board, the trip when the money was seized?
A. Yes, sir, to the best of my knowledge I did.

Mr. HARGIS: That is all.

Cross-examination by Mr. GEORGE:

Q. Where did you see him?
A. On board the ship.
Q. Where?
53 A. Between the hatch and the gangway, the gangway that leads past my room to the room of the comprador.
Q. So he passed towards the comprador's room?
A. Yes, sir.
Q. What at-racted your attention to him?
A. Because no Chinos are allowed on board, and he was a stranger.
Q. Did you accost him?
A. No, sir.
Q. Knowing that he was a stranger, why did you not accost him?
A. It was none of my business, and very often Chinos come alongsied in cascos, loading and unloading cargo.
Q. Are you positive that this is the same Chino that you saw?
A. Yes, sir.
Q. Are you positive of it?
A. Yes, sir.
Q. Did you go to the comprador's room?
A. No, sir.
Q. Did he have any money with him?
A. Not that I could see.
Q. Did he have any in the hem of his garment?
A. Not that I could see.
Q. Did you see any other Chino on board that trip?
A. I did not notice any other.
Q. How do you remember so specifically if your suspicion was not aroused?
A. I have seen Chinos on board the ship before, and did not take much notice of them, but this Chino was taller than the ordinary, and attracted my attention.
54 Q. Had you ever seen — before?
A. No, sir, not to remember specifically, but this time he was the first one I saw straying through the ship.
Q. Did you not say your attention was called to a stranger coming on board?
A. I said alongside in cascos.
Q. Did you ever see him alongside in a casco?
A. No, sir, not to my knowledge.
Q. Could you identify any of the other Chinos you saw alongside in cascos?
A. I don't think that I could.

Mr. GEORGE: That is all.

The hearing was then suspended for the purpose of obtaining witnesses to identify the insurance policy.

JANUARY 15TH, 1907.

The COURT: It is agreed that the testimony of the witness now on the stand shall be perpetuated, and can be used in any subsequent civil case in relation to this 20,600 pesos in controversy in this action.

WONG TAI, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. HARGIS:

Q. State your name?
A. Wong Tai.
Q. How old are you?
A. Fifty-nine years of age.
55 Q. Where do you live?
A. No. 21 Wing Lok Street, Hongkong.
Q. How long have you lived in Hongkong?
A. Forty-five years.
Q. Do you know the defendant in this case, Ling Su Fan?
A. Yes, sir.
Q. How long have you known him?
A. More than ten years.
Q. What does he do?
A. He was acting as manager of a rice shop.
Q. What has he been doing the last two or three years?
A. Since he left the rice shop he went on board the steamer "Taming" as comprador.
Q. What is your business in Hongkong?
A. Dealing in Japanese piece goods.
Q. Have you had any business with Ling Su Fan in the last three or four months?
A. I talked it over with him two or three months ago.
Q. Tell the Court what the nature of that business was?
A. First he came to my place and told me that there was a good chance of making money by buying old coin in Manila.
Q. Then what happened?
A. He told me that with 97 pesos Conant I could buy 100 pesos Mex., and that for 82 pesos Conant I could buy 100 pesos Spanish coin.
Q. When did he tell you this?
A. On the afternoon of the 1st day of December.
Q. Then what did you do?
A. I figured out that I could make seventy pesos on the thousand.
56 Q. Then what did you do?
A. I asked him how much he could buy and he said more than 20,000 pesos, and that there was a very good chance to make money if we could get the capital.

Q. Go ahead and tell all the business you did?

A. Then I made arrangements to find the money and when I found some Philippine Currency in the market I offered to buy.

Q. Did you buy it?

A. Yes, sir, I bought 6800 pesos the first time.

Q. What did you pay for it?

A. With 965 dollars Hongkong currency I buy 1000 pesos Conant in Hongkong.

Q. What day was this?

A. On the afternon of the 1st day of December, 1906.

Q. Did you buy any more money?

A. Yes, I then bought another 3000 pesos at 968.75 for the 1000.

Q. When did you buy this?

A. On the same day, later on in the afternoon.

Q. Did you buy any more?

A. Then on December 2nd I buy another 6000 pesos at 970 for the 1000.

Q. Did you buy any more?

A. And another time I bought 4800 pesos at 971.25 for the 1000.

Q. What did you do with this money?

A. I bought it from the house of Yau Yoc, a Hongkong money changer, and told them to pack it up for me in rolls of fifty pesos each.

Q. What did you do with it?

57 A. Then on Monday morning, the 3d, I brought 10,000 of these pesos on board the "Taming."

Q. When you took them on board the "Taming" what did you do?

A. This money was put up in gunny-sacks and delivered to the comprador, I gave it into his hands and told him to stow it away in his box.

Q. What did you do with the rest of the money?

A. Then on Tuesday, on the morning of the 4th, I sent another 5000 pesos, and on the same day in the afternoon I sent 5600 pesos.

Q. To whom did you deliver that money?

A. To Ling Su Fan, the comprador, and then he gave me a receipt covering this 20,600 pesos.

Q. How did you take this money on board the "Taming?"

A. I went on board myself with an employee of the money changer, and when I delivered the money to the comprador he gave me a receipt, and at the same time I showed him a copy of the insurance policy and told him I had insured this money: then on the 4th after I had delivered all the money to him I showed him the original policy, and then after delivering this money I left the ship when she was about to sail, and before I left I told him that if he could buy any old Mexican money or old Spanish money at a proper rate that I would allow him a commission after paying the freight.

Q. Do you know who the man was that the defendant was going to buy this money from?

A. I remember he told me he had a friend in Manila named Juan On Hing, and could buy this old currency from him.

58 Q. Did you give the defendant any instructions when you turned this money over to him as to what he should do with it?

A. No, sir, I only expected he would succeed, and when the steamer arrived again at Hongkong Ling Su Fan came to me and was very much frightened, and told me the money had been seized by the Customs authorities in Manila, and I became excited also over the matter.

Q. What did you do when you knew the money had been seized?

A. I asked him why he did not buy the old currency, and he told me that the man had raised the rate four per cent.

Q. Did you authorize him to bring the money back?

Mr. BLANCHARD: Objected to as leading.

The COURT: Yes, but you cannot get at it in — other way. Let him answer.

A. No, sir, I told him that there was still a chance of paying a little higher, and if he could not get it that way that he must try his best to bring it back to me, and then he promised me that he would do the best he could to get it back, and then in order that he might explain the matter I gave him the insurance policy to show.

Q. Is this the insurance policy you refer to (showing to witness)?

A. Yes, sir.

Q. What was this policy taken out for?

A. For 21,000 pesos.

Mr. HARGIS: I offer this policy in evidence, and ask that it be marked Exhibit D 1.

Mr. GEORGE: I object to the admission of the policy as incompetent, irrelevant and immaterial, and certainly the affidavit attached to it is hearsay.

59 The COURT: The affidavit is not a part of the policy, it merely certifies that the man who signed the policy was an agent of that particular insurance company and was entitled to sign for it.

Mr. HARGIS: I have not offered the affidavit in evidence.

Mr. GEORGE: I object on the further ground that the signature is not proven.

The COURT: That is not necessary.

Mr. HARGIS: That is all.

Cross-examination by Mr. GEORGE:

Q. Where do you live in Hongkong?

A. At No. 21 Wing Lok street.

Q. Is that your place of business or just your residence?

A. I have a business in Japanese piece goods there.

Q. Is this the first money you had purchased to send to the Philippine Islands to buy Mexican and Spanish money?

A. This is the first time and will be the last time.

Q. Was anybody associated with you in this business, or did you buy this money by yourself with your own funds?
A. That is out of my own business.
Q. With what money did you purchase this Philippine Currency in Hongkong?
A. With Hongkong Currency.
Q. And you bought first 6800 pesos?
A. Yes, sir.
Q. Where did you purchase that?
A. From Yau Toc, a money changer.
60 Q. Where does Yau Toc live?
A. At No. 1 Wing Lok street.
Q. What is his business?
A. Dealing in money, buying and selling all kinds of currency.
Q. Where did you buy the three thousand pesos?
A. I bought all the money from him, because he is a money changer and he collected it for me.
Q. You bought all that money from him?
A. Yes, sir.
Q. And you did not buy from any one else.
A. No, sir.
Q. Did you pay cash for this money?
A. Yes, sir.
Q. Where did you get so much cash within four days?
A. I always have three or four thousand pesos in hand.
Q. Did you have to draw any of this money out of the Bank, or did you have it with you in the house?
A. Some of that money was taken from the business in the house, and some from the Bank with whom I had money invested.
Q. Do you know what Bank you drew that money from?
A. Su Lung & Yau Ki, and all these money concerns.
Q. Where is Su Lung's bank?
A. At Prince's Row, central, in Hongkong.
Q. Do you remember the number?
A. No, sir.
Q. Where is the bank of Yau Ki?
A. In the same street.
Q. How much money did you draw from the banks of these two men?
61 A. That is my money.
Q. But how much did you get from these banks?
A. I drew ten thousand pesos from Yau Ki and eight thousand pesos from Su Lung.
Q. Was this paper money or coin?
A. Hongkong currency, paper money.
Q. Now you knew that Conant money was more valuable as bullion than as money, did you not?
A. I did not know, Conant money is not Currency in Hongkong.
Q. But you sent over 20,600 pesos of this money, did you not?
A. Yes, sir.
Q. And you insured it for 21,000 pesos, did you not?

A. Yes, sir, because there is certain expenses and costs attached to it.

Q. But did you not know that in buying these silver pesos there is more than one peso'ss worth of silver?

Mr. HARGIS: Objected to as ambiguous.

The COURT: It is not intelligible.

Q. Well, the bullion value of a peso is more that its face value as money, is it not?

A. I did not get acquainted with that, but I know they are not current in Hongkong.

Mr. HARGIS: I object to this as not proper cross-examination, the witness not being qualified as an expert.

The COURT: Objection sustained as not proper cross-examination.

Q. When you melt a peso is it worth more before or after it is melted?

Mr. HARGIS: Objected to as not proper cross-examination,
62 the witness not being qualified as an expert.

The COURT: Objection sustained.

Q. Why did you buy these dollars to send over here to buy this money?

A. I figured out that I would make thirty cents a thousand profit, so I preferred to buy it in that way to sending Conant money in any other way.

Q. Why did you not send other money, why did you buy Philippines currency and send here to purchase Mexican dollars?

A. I figured that there was a profit in this way.

Q. Why did you not buy gold and send over gold to purchase this Mexican money?

A. If I bought gold there was no chance, and besides people mostly speculate in gold currency in Hongkong.

Q. And you wanted Philippines currency to buy this money, did you?

A. I figured it out as the best way where I could realize to the most advantage.

Q. If you were figuring out that this was the best way to get the most for your money why did you not buy gold and buy these Philippines pesos cheaper here in Manila and use them to pay for Mexican Currency here?

Mr. HARGIS: Objected to as not proper cross-examination.

The COURT: Objection sustained, this is entirely too far away from the issue in the case.

Q. Why did you send this silver Philippines Currency, why did you not send a draft?

A. At first I thought of sending a draft, but it being Satur-
63 day and the banks being closed, I thought this was the better way.

Q. You said that Conant money does not circulate in Hongkong, I believe.

A. Yes, sir.
Q. Do Spanish dollars circulate in Hongkong?
A. Yes, sir, some.
Q. Do they pass current there?
A. Yes, sir, but they are not much used, there are some in the marked but I believe they do not take them as their full value.
Q. They buy them as bullion the same as they buy Philippine pesos.

Mr. HARGIS: Objected to as not proper cross-examination.
The COURT: The witness may answer, but do not branch out further in regard to the matter.

A. This money is usually when bought in the market shipped to Canton, this old currency.
Q. And it is shipped there to sell as silver, is it not?
A. There is a market for it in Hongkong.
Q. You sell it there just for the silver in it, it does not pass current as money?
A. It is not exactly bullion but some people take it, and to some extent it is used in Hongkong for money.
Q. You have stated that you told Ling Su Fan to allow the ship something for freight in this money; what do you mean by that?
A. When you buy these things you have to take a great deal of space and allow something to the ship for freight.
64 Q. Did you have any arrangement with the officers of the ship to pay freight in this money?
A. No, sir, I left it to the disposition of the comprador.
Q. Did you tell the comprador to pay freight on this money you were sending?
A. I did not tell him exactly, I left it to his disposition.
Q. Did you get an invoice or bill of lading for this money you put on board this ship to send over here?
A. No, sir.
Q. Did you tell the Captain of the ship, or any one except Ling Su Fan that you were sending this money on board the ship?
A. No, sir, I did not tell any officer because I entrusted the whole matter to the comprador.
Q. You did not get out an invoice and have it certified to before the United States Consul in Hongkong for this 20,600 pesos, of Philippines Currency that you shipped?

Mr. HARGIS: Objected to as incompetent, immaterial and irrelevant.
The COURT: Objection sustained.

Q. Where was this money placed when you took it aboard and gave it to the comprador?
A. It was delivered to him in gunny sacks, and I saw him open his box and put it in there.
Q. In his stateroom?
A. Yes, sir, underneath his trunk.
Q. Was it in the daytime or in the night time that he did that?

65 A. The money was delivered on three occasions.

Mr. GEORGE: That is all.

The COURT: The testimony of this witness will be attached to *to* the record on the adjourned day, as evidence taken in the trial of the case.

The case was then suspended until January 21st, 1907.

JANUARY 21ST, 1907.

Pursuant to adjournment the case was called this a. m. with the same appearance.

Rebuttal.

T. K. ADREON, called in behalf of the Government being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. T. K. Adreon.
Q. Where do you live?
A. No. 68 Calle Marquis de Comillas.
Q. What is your business?
A. Bank Examiner, Insular Treasury.
Q. State whether or not you are familiar with and keep posted as to the buying and selling price or value of Conant silver dollars, that is the bullion value?
A. Yes, sir, that is part of my duty.
Q. Can you state what was the bullion value of Conant silver dollars on December 10th, 11th and 12th, 1906?

66 Mr. HARGIS: Objected to as incompetent, immaterial and irrelevant, and as not rebuttal of any evidence put in by the defense.

The COURT: I do not see what difference it makes, but the question may be answered.

Mr. HARGIS: Exception.

A. On December 10th the peso was worth 1.09420; on the 11th——

Mr. HARGIS: Objected to as not proper rebuttal, there is no evidence at all that this money was in Hongkong after December 4th.

The COURT: The value must be confined to the date of its alleged deportation.

Q. Can you give us about what the bullion value of Conant dollars were from December 1st to December 4th, 1906?
A. On the 4th they were worth between 1.09846 and 1.08564, somewhere between the two.
Q. And about that between the 1st and the 4th?
A. Yes, sir.
Q. Can you tell us about what the bullion value of Mexican dol-

lars was between November 27th and December 12th, 1906, on each day?

Mr. HARGIS: Objected to.

Q. I will ask you what is the value of Mexican dollars in Hongkong and in Manila at that time: face value or bullion value?
A. The value in Hongkong would be bullion value.
Q. And here what would be the value?
A. Bullion value, it has no value here as token coin.
67 Q. Can you tell us whether or not silver bullion fluctuated perceptibly between November 27th and December 12th, 1906?

Mr. HARGIS: Objected to, he is not confining himself to evidence already introduced.
The COURT: Objection sustained.
Mr. GEORGE: Exception.

Q. State whether or not between November 27th and December 12th, 1906, the bullion value of Mexican dollars appreciated or depreciated?

Mr. HARGIS: Same objection.
The COURT: Objection sustained.
Mr. GEORGE: Exception.

Q. I wish to know whether or not you, through the banks, have kept informed as to the amount of Conant silver money in Hongkong?

Mr. HARGIS: Objected to as incompetent, immaterial and irrelevant, and not proper rebuttal.
The COURT: Objection sustained.
Mr. GEORGE: Exception.
Mr. HARGIS: No cross-examination.

W. W. HOADLEY, called in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. GEORGE:

Q. State your name?
A. W. W. Hoadley.
Q. Where do you reside?
A. In Manila.
Q. What is your occupation?
68 A. Manifest clerk, Custom House.
Q. As such do you have custody of the manifests of incoming and outgoing steamers?
A. Not exactly the custody, but I help in the checking in and out.
Q. You have custody of them for that purpose?
A. I am manifest clerk on incoming cargo-s.
Q. Do you check outgoing also?
A. No, sir.
Q. Have you the manifests for the incoming and outgoing voyages of the steamer "Taming"?

A. Yes, sir.
Q. For what dates?
A. Incoming December 7th, and outgoing December 11th.
Q. I wish to know whether or not there was any Conant silver, or Conant currency of any kind, on the manifests of the "Taming", the incoming manifest of December 7th, and the outgoing manifest of December 11th?

Mr. HARGIS: Objected to as incompetent and immaterial and as not proper rebuttal.
The COURT: The witness may answer.

A. None appears on the manifest.
The COURT: You mean either manifest.
A. Yes, sir.

Mr. GEORGE: That is all.

69 Cross-examination by Mr. HARGIS:

Q. Are these the originals of the manifests in question?
A. The original we check, this is the auditor's copy which we send to the auditor's department. This is not the original, but identically the same. We keep the original on the desk to check out cargo, and afterwards the copy is sent to the auditor, one is the same as the other.
Q. Are you testifying from the copy there, information received from the copy?
A. Yes, sir.
Q. Is it certified.
A. Certified and signed by the Captain, it is a duplicate manifest.
Mr. GEORGE: You mean the Captain of the "Taming"?
A. Yes, sir, Captain Oughterbridge.

Mr. HARGIS: That is all.
Mr. GEORGE: That is all the evidence we have to offer in this case.
The COURT: The case is closed.

I certify that the above is a correct transcript of shorthand notes taken by me of the proceedings in Criminal Case No. 2947, entitled The United States *vs.* Lim Su Fan, in the Court of First Instance for the City of Manila, on January 4th, 7th, 15th, and 21st, 1907.

(Signed) WM. M. BARRINGTON,
Official Reporter.

70 Afterwards, to-wit, on the fifteenth day of February, 1907, the Honorable Court, after hearing the evidence had and taken in said cause, rendered the following decision:

"Sentence.

This case is now before the Court for trial upon a complaint charging the defendant with attempting to export from the port of Manila, P. I., on the 12th day of December, 1906, the sum of twenty thousand six hundred pesos in Philippine silver coins, in violation

of the provisions of Act 1411 of the United States Philippine Commission.

Mr. Jesse George, Assistant Prosecuting Attorney, and Mr. R. D. Blanchard, Assistant Attorney General, appeared in behalf of the Government; Mr. Lionel D. Hargis and Mr. C. W. O'Brien on the part of the defendant.

From the evidence presented I find the following facts:

That on the 12th day of December, 1906, an employee at the Manila Custom House found on board the steamer "Taming" in a bunk occupied by and in the exclusive use and control of the defendant, who was comprador on board, twenty thousand six hundred silver coins each of one peso, being coins made and issued by and under the direction of the Government of the Philippine Islands;

That when the said coins were discovered as aforesaid and the defendant was confronted with the fact, he stated at first that
71 he knew nothing about it, and afterwards that they had been brought aboard by different Filipinos whom he did not know, and had been stored in the place in which they were found for transportation to Hongkong, and these statements were made by the defendant voluntarily;

That the steamer "Taming" on which these coins were found had already been cleared from the port of Manila for Hongkong, and that she was about ready to sail, and that the coins were not manifested either in the incoming or outgoing voyage of the vessel.

The finding of the coin aboard the "Taming", as before stated, was admitted by the defendant at the trial and evidence was presented in defense that, at the time of making the statements before referred to, the defendant was in an excited condition and did not realize what he said.

Further evidence was offered on the part of the defense to that effect that the money was owned by a Chinaman in Hongkong, who shipped the same to the Philippine Islands by the defendant for the purpose of purchasing Mexican silver coins and Spanish-Filipino silver coins, in accordance with an agreement made by defendant with another person in Manila under which for eighty-two Philippine Pesos he was to receive one hundred Spanish-Filipino pesos, and for ninety-seven Philippine pesos he was to receive one hundred pesos Mexican currency, and in corroboration of the shipment there was presented an insurance policy upon these coins issued
72 by an insurance company at Hongkong.

The defendant testified that upon bringing the coins to Manila he ascertained that he could not purchase the Mexican coins and the Spanish-Filipino coins as advantageously as he had before agreed, and in accordance with his understanding with the owner of the Philippine silver coins and so had decided to take the Philippine coins back to Hongkong to the owner thereof.

The bullion value of the coins at the time they are alleged to have left Hongkong was at least nine per cent. more than their apparent face value in the Philippine Islands.

From the appearance of the witnesses while testifying, who testi-

fied that the said coins were brought to the Philippine Islands for the purpose of buying other coins, and from the unreasonableness of the proposition advanced by them, I am unable to give their testimony credence. I am unable to believe that any person would send this amount of coin to the Philippine Islands from Hongkong in the care of the defendant, who was an employee as before stated on board the steamer "Taming", without the knowledge of the owners of the vessel or its shipping agent at Hongkong, and without the knowledge of the master of the vessel.

It further appears to be unreasonable that Philippine coins should have been shipped to Manila when its bullion value would have purchased more in exchange at Hongkong payable in the city of Manila than the face value of the coin here would be.

73 The conclusion, from the facts as they appear, is that the defendant attempted to export from the Philippine Islands twenty thousand six hundred Philippine silver coins of the denomination of one peso each.

I therefore find the defendant, Ling Su Fan, guilty as charged in the complaint, and sentence him to sixty days' imprisonment and to pay a fine of two hundred pesos. This sentence will be executed at Bilibid Prison, Manila, P. I.

Manila, P. I., February 15th, 1907.

(Signed) A. S. CROSSFIELD, *Judge.*"

Afterwards, to-wit, on the eighte-nth day of February, 1907, notice of appeal to the Supreme Court of the Philippine Islands was given by counsel for the defense.

Afterwards, to-wit, on the eleventh day of April, 1907, the said cause was duly forwarded to the Clerk of the Supreme Court of the Philippine Islands, the letter of transmittal appearing in the record.

74 Afterwards, to-wit, on the thirty-first day of July, 1907, the defendant, Ling Su Fan, presented his Brief in the Supreme Court of the Philippine Islands, accompanied by the following Assignment of Errors:

First. That the trial Court erred in overruling the demurrer presented to the complaint, by the defendant and appellant; and,

Second. That the sentence of the trial Court was contrary to law and to the great weight of the evidence.

Afterwards, to-wit, on the fifth day of November, 1907, the said Supreme Court of the Philippine Islands met in public session, and the hearing of this case was announced and had, Mr. R. D. Blanchard, Assistant Attorney General, appearing on behalf of the Government, and the case was taken under advisement.

Afterwards, to-wit, on the tenth day of February, 1908, the said Supreme Court of the Philippine Islands announced its decision on the merits of the said cause, Number 3962, "The United States *versus* Ling Su Fan," which said decision is in the words and figures following, to-wit:

"UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

General Register, 3962. Book of Decisions, No. 14, p. —. Hearing, Nov. 5th, 1907.

THE UNITED STATES, Plaintiff and Appellee,
vs.
LING SU FAN, Defendant and Appellant.

Present: The Honorable Chief Justice, and Associate Justices, Torres, Mapa, Johnson, Carson, Willard and Tracey.

75 *Decision.*

JOHNSON, *J.:*

This defendant was accused of the offence of "exporting from the Philippine Islands, Philippine silver coins," in a complaint filed in the Court of First Instance of the City of Manila. The complaint was in the words following:

"The undersigned accused Ling Su Fan of the criminal offence of attempting to export Philipine silver coins from the Philippine Islands contrary to law, committed as follows:

"That on or about the 12th day of December, 1906, in the City of Manila, Philippine Islands, *Philippine Islands,* the said Ling Su Fan was freight clerk, supercargo, comprador and person in charge of all shipments of freight on board the steamship "Taming," which said steamship "Taming" was then and there about to depart from the port of Manila, Philippine Islands, to the port of Hongkong; that the said Ling Su Fan did then and there wilfully, unlawfully and feloniously, place, conceal and hide the sum of twenty thousand, six hundred (20,600) pesos in Philippine silver coins, coined by authority of the Act of Congress approved March 2, 1903, in his stateroom on board the said steamship "Taming" with the intent of exporting the said Philippine silver coins from the Philippine Islands to the port of Hongkong, and did then and there attempt to export
76 the said Philippine silver coins from the Philippine Islands to the said port of Hong Kong;

"Contrary to the provisions of Act No. 1411 of the Philippine Commission."

(Signed) "W. H. POLLEY."

"Subscribed and sworn to before me and in my presence in the City of Manila, P. I., this 20th day of December, 1906, by W. H. Polley."

(Signed) A. S. CROSSFIELD,
Judge, Court of First Instance, Manila, P. I.

To this complaint the defendant presented the following demurrer:

"Now comes Ling Su Fan, the accused in the above entitled cause, through his undersigned counsel, and demurs to the complaint

filed against him herein and for causes of demurrer, respectfully shows:

1. That said complaint does not conform substantially to the prescribed form.

2. That the facts charged do not constitute a public offence.

3. That the said complaint is contrary to the provisions of the XIV Amendment of the Constitution of the United States of America and also contrary to paragraph I of Section V of the Act of Congress of the United States of America dated July 1st, 1902.

Wherefore, the defendant herein prays the Court that the said complaint be dismissed and that he, said defendant, be dis-
77 charged from custody and arrest.

Manila, P. I., December 28th, 1906."

(Signed) "LIONEL D. HARGIS,
"C. W. O'BRIEN,
Attorneys for Defendant,
18 *Plaza Cervantes, Manila.*"

Upon this demurrer the Court below made the following order:

"The case is before the Court for hearing the demurrer to the complaint presented by the defendant.

"After examining the demurrer and the complaint, and giving the same due consideration, I am of the opinion that the grounds of demurrer are not well taken.

"It is therefore ordered that the demurrer be, and it is overruled."

No exception was made at the time of the overruling of the demurrer.

The defendant was duly arraigned and plead "Not guilty." The case then proceeded to trial.

After hearing the evidence adduced during the trial of the cause, the Court below made the following findings of fact:

"That on the 12th day of December, 1906, an employé at the Manila Custom House found on board the steamship "Taming" in the bunk occupied by and in the exclusive use and control of the defendant, who was then comprador on board (said ship) 20,600 silver coins, each of one peso, being coins made and issued by and under the direction of the Government of the Philippine Islands; that when the said coins were discovered as aforesaid and the
78 defendant was confronted with the fact, he stated at first that he knew nothing about it, and afterwards that they had been brought on board by different Filipinos whom he did not know and had been stored in the place in which they were found for transportation to Hongkong; that these statements were made by the defendant voluntarily; that the steamship "Taming" on which these coins were found, had already been cleared from the port of Manila for Hongkong and that she was about to sail, and that the coins were not manifested either in the incoming or outgoing voyage of the said vessel; that the finding of the coins on board the said steamship "Taming", as before stated, was admitted by the defendant at the trial; that the bullion value of the said coins at the time they were alleged to have left Hongkong was at least 9% more than their apparent face value in the Philippine Islands."

The lower Court made the following observations concerning the proof offered by the defendant and his witnesses during the trial:

"Evidence was offered on the part of the defense to the effect that the said money was owned by a Chinaman in Hongkong, who shipped the same to the Philippine Islands by the defendant, for the purpose of purchasing Mexican silver coins and Spanish-Filipino silver coins, in accordance with an agreement made by the defendant with another person in Manila, under which for 82 Philippine pesos he was to receive 100 Spanish-Filipino pesos and for 97 Philippine pesos he was to receive 100 pesos, Mexican Currency, and in
79 corroboration of the shipment there was presented an insurance policy upon these coins, issued by an insurance company at Hongkong. The defendant testified that upon bringing the coins to Manila he ascertained that he could not purchase Mexican coins and Spanish-Filipino coins as advantageously as he had before agreed, and in accordance with his understanding with the owner of the Philippine silver coins, and so decided to take the Philippine coins back to Hongkong to the owner thereof."

The lower Court made the following observations relating to the credibility of the defendant and his witnesses:

"From the appearance of the witnesses while testifying, who testified that said coins were brought to the Philippine Islands for the purpose of buying other coins and from the unreasonableness of the proposition advanced by them, I am unable to give their testimony credence. I am unable to believe that any person would send this amount of money to the Philippine Islands from Hongkong in the care of the defendant, who was an employé as before stated on board the steamer "Taming", without the knowledge of the owners of the vessel or its shipping agent at Hongkong, and without the knowledge of the master of the vessel."

Upon these foregoing findings of fact and observations, the lower Court found the defendant Ling Su Fan guilty of the offence charged in the complaint, and sentenced him to be imprisoned for a period of sixty days and to pay a fine of P.200.00.

80 From that sentence the defendant appealed to this Court and made the following assignment of errors:

1st. The Court (below) erred in over-ruling the demurrer presented to the complaint by the defendant and appellant; and

2nd. The sentence of the Court (below) was contrary to law and to the great weight of evidence.

The appellant basis his first above assignment of error upon the third ground of the demurrer presented by him in the Court below and which the lower Court over-ruled. The third ground of the demurrer is as follows:

"That said complaint is contrary to the provisions of the 14th Amendment of the Constitution of the United States of America and also contrary to paragraph one of section five of the Act of Congress of the United States of America, dated July 1, 1902."

That part of the contention of the appellant which refers to the Constitution of the United States can have no important bearing upon the present case, for the reason that paragraph one of section

five of said Act of Congress, dated July 1, 1902, is almost exactly in the same phraseology as a portion of the 14th Amendment of the Constitution of the United States, and therefore decisions of the Supreme Court of the United States, in construing said 14th Amendment, may be referred to for the purpose of ascertaining what was intended by Congress in enacting said paragraph one of section five, and what laws the Philippine Commission may make under
81 its provisions.

Paragraph one of section five of the said Act of Congress is as follows:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property, *without due process of law,* or deny to any person therein equal protection of the laws."

It will be noted that this amendment does not prohibit the enactment of laws by the legislative department of the Philippine Government, depriving persons of life, liber-y or property. It simply provides that laws shall not be enacted which shall deprive persons of life, liberty or property, *without due process of law.* The question then is presented, is the act under which the defendant is prosecuted here and under which it is sought to deprive him of the money which it is alleged he attempted to illegally export, in accordance with due process of law.

The Congress of the United States, on the 2nd day of March, 1903, passed an Act entitled "An Act to establish a standard of value and to provide for *the* a coinage system in the Philippine Islands." Section six of said Act is as follows:

"SEC. 6. That the coinage authorized by this Act shall be subject to the conditions and limitations of the provisions of the Act of July 1st, 1902, entitled "An Act temporarily to provide for the administration of affairs of Civil Government in the Philippine Islands, and for other purposes, "except as herein otherwise provided";
82 and the Government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with the Act of July 1st, 1902, to maintain the value of the Philippine silver peso, at the rate of one gold peso, and in order to maintain such parity between such silver Philippine peso and the gold peso, herein provided for," etc. etc.

In pursuance to the authority in said Section 6, to-wit: "That the Government of the Philippine Islands may adopt such measures as it may deem proper, etc. etc. to maintain the value of the Philippine silver peso at the rate of one gold peso, etc. etc.", the civil Commission, enacted Law No. 1411 of date November 17th, 1905, which Act was entitled "An Act for the purpose of maintaining the parity of the Philippine Currency in accordance with the provisions of Sections one and six of the Act of Congress, approved March 2, 1903, by prohibiting the exportation from the Philippine Islands, of the Philippine silver coins, and for other purposes."

Sections one and two of the said Act of the Civil Commission are as follows:

SECTION 1. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the Act of Congress ap-

proved March 2nd, 1903, or the bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion which is exported or of which the exportation is attempted subsequent to the passage of this Act and contrary to its provisions, shall be liable to forfeiture, under due process of law, and one-third of the sum or value of the
83 bullion so forfeited shall be payable to the person upon whose information, given to the proper authorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government and accrue to the gold standard fund. Provided, That the prohibition herein contained shall not apply to sums of P.25.00 or less, carried by passengers leaving the Philippine Islands."

"SECTION 2. The exportation or attempt to export Philippine silver coins or bullion made from such coins from the Philippine Islands, contrary to law, is hereby declared to be a criminal offence, punishable, in addition to the forfeiture of the said coins or bullion as above provided, by a fine not to exceed P.10,000.00 or by imprisonment for a period not to exceed one year, or both, in the discretion of the Court."

It will be noted that the Civil Commission expressly relied upon the Act of Congress of March 2nd, 1903, for its authority in enacting said Law No. 1411.

Under the question above suggested it becomes important to determine what Congress intended by the phrase "due process of Law." This phrase has been discussed a great many times by the Supreme Court of the United States, as well as by writers upon questions of constitutional law. This same idea is couched in different language in different constitutions of the different States of the Union. In some the phrase is "The law of the land." In others "Due course of law." These different phrases, however, have been given practically the same definition by the different Courts which have
84 attempted an explanation of them. The phrase "due process of Law" was defined by Judge Storey in his work on constitutional law as "the law in its regular course of administration through the Courts of Justice."

Judge Cooley in his work on Constitutional Limitations says: "Due process of law in each particular case means, such an exercise of the powers of the government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribed have to the class of cases to which the one in question belongs."

The famous constitutional lawyer, Daniel Webster, in his argument before the Supreme Court of the United States in the case of Dartmouth College *vs.* Woodard (4 Wheaton, 518) gave a definition of this phrase which the Supreme Court of the United States quoted and adopted. It was: "By the law of the land is more clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which

govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land." (part missing—p. 16 Webster's Speeches.)

There are but few phrases in the Constitution of the United States which have received more attention by the Courts of the
85 United States in an endeavor to ascertain their true meaning, than have been given to this expression "due process of law." Recently an entire volume has been published devoted entirely to the meaning of this phrase.

"Due process of law" is process or proceedings according to the law of the land. "Due process of Law" is not that the law shall be according to the wishes of all the inhabitants of the state, but simply,

1st. That there shall be a law prescribed in harmony with the general powers of the legislative department of the Government;

2nd. That this law shall be reasonable in its operation;

3rd. That it shall be enforced according to the regular methods of procedure prescribed; and

4th. That it shall be applicable alike to all the citizens of the state or to all of a class.

When a person is deprived of his life or liberty or property, therefore, under a law prescribed by the proper lawmaking body of the state and such law is within the power of said department to make and is reasonable and is then enforced according to the regular methods of procedure prescribed and is applicable alike to all the citizens or to all the citizens of a particular class within the state, such person is not deprived of his property or of his life or of his liberty without due process of law. When life, liberty and property are in question there must be in every instance judicial proceedings, and that requirement implies a written accusation and hear-
86 ing before an impartial tribunal with proper jurisdiction, an oppo-tunity to defend and a conviction and judgment before punishment can be inflicted, depriving one of his life, liberty or property.

Storey on the Constitution (4th Edition, Sections 1943-1946;)

Principles of Constitutional Law, Cooley, 224.

Such have been the views of able jurists and statesmen and the deduction is that life, liberty and property are placed under the protection of known and established principles which can not be dispensed with either generally or specially, either by the Courts or executive officers or by the legislative department of the Government itself. Different principles are applicable in different cases and require different forms of proceeding; in some they must be judicial; in others the Government may interfere directly and *ex parte;* but in each particular case "due process of law" means such an exercise of the powers of the Government as the settled maxims of law permit and sanction and under such safeguards for the protection of the individual rights as those maxims prescribed have to the class of cases to which the one being dealt with belongs.

(Principles of Constitutional Law by Cooley, 224.)

Illustrations might be given indefinitely, showing how the Supreme Court of the United States, as well as the Courts of the different States of the Union have applied this general doctrine. The question is fully discussed in the following cases:

Murrar'y Lessee *vs.* Hoboken Land Co., 18 How. 272, 276;
87 Dartmouth College *vs.* Woodard, 4 Wheaton, 518;
Bank of Columbia *vs.* Okley, 4 Wheaton, 235;
Walker *vs.* Sanvinet, 92 U. S., 90;
Cooley, Constitutional Limitations, Chapter 11;
Storey on the Constitution, Sections 1943-1946;
Mulligan's case, 4 Wallace, 2;
Davidson *vs.* New Orleans, 96 U. S., 97, 103;
Slaughter House Cases, 16 Wallace, 36, 77, 80;
French *vs.* Barber Asphalt Paving Co., 181 U. S., 324;

which contains a historic discussion of the general meaning of this phrase.

In the present case the following facts may be noted:

1st. That the Civil Commission, on the 17th day of November, 1905, regularly and under the methods prescribed by law, enacted Law No. 1411, providing for the punishment of all persons who should export or attempt to export from the Philippine Islands Philippine silver coins.

2nd. That this law had been enacted and published nearly eleven months before the commission of the alleged offence by the defendant.

3rd. That a complaint was duly presented, in writing, in a Court regularly organized, having jurisdiction of the offence under the said law, and the defendant was duly arrested and brought before the Court and was given an opportunity to defend himself against the said charges.

4th. That the defendant was regularly tried, being given an
88 opportunity to hear and see and to cross-examine the witnesses presented against him and to present such witnesses in his own defense as he deemed necessary and advisable.

5th. That after such trial the said Court duly sentenced the defendant, complying with all the prescribed rules of procedure established.

6th. That said Act No. 1411 was duly enacted by the Philippine Commission in pursuance of express authority given said Commission by the Congress of the United States in an act duly approved March 2nd, 1903.

A question remaining is: Did the Civil Commission have authority to enact said Law No. 1411; Certainly said Commission is limited in its powers. As Daniel Webster said in the famous Dartmouth College case:

"Everything which may pass under the form of an enactment is not to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgment, and acts directing and transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms would be the law of the land. Such a strange con-

struction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all the powers in the legislature. There would be no general permanent law for the Courts to administer or
89 men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees, but not to declare the law or administer the justice of the country."

But notwithstanding the limitations upon the power of the Commission, there are certain powers which legislative departments of the government may exercise and which can not be limited. These are known as the police powers of the State. The police power of the State has been variously defined. It has been defined as the powers of government inherent in every sovereignty. (License Cases, 5 Howard, 583.) The power vested in the legislature to make such laws as they shall judge to be for the good of the state and its subjects (Commonwealth *vs.* Alger, 7 Cushing, Mass., 85); the powers to govern man and things extending to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the state (Thorpe *vs.* Rutland and B. R. Co., 27 Vermont, 149); the authority to establish such rules and regulations for the conduct of all persons, as may be conducive to the public interests (People *vs.* Budd, 117 New York, 14). This question of what constitutes police power has been discussed for many years by the courts of last resort in the various States and by many eminent law writers.

Blackstone in his Commentaries upon the common law define police power as "the defense, regulation and domestic order of the country whereby the inhabitants of a state like members of a well
90 governed family are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious, and inoffensive in their respective stations (4 Blackstone's Commentaries, 162). Chief Justice Shaw in the case of Commonwealth *vs.* Alger, (7 Cushing, 53, 84) said: "We think it is a settled principle, growing out of the nature of well ordered civil society that every holder of property, however absolute and unqualified may be his title, holds its under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having equal rights to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property like all other social and conventional rights are subjects to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient."

The police power of the state may be said to embrace the whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated

to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with
91 a like enjoyment of rights by others. The police power of the state includes not only public health and safety but also the public welfare, protection against impositions, and generally the public's best interest. It is so extensive and all-pervading that Courts refuse to lay down a general rule defining it, but decide each specific case on its own merits (Harding *vs.* People, 32 Lawyers' Rep. Anno., 445). This power has been exercised by the state in controlling and regulating private business even to the extent of the destruction of property of private persons when the use of such property became a nuisance to public health and convenience.

(Slaughter-house Cases, 16 Wallace, 36);
Minnesota *vs.* Barber, 136 U. S., 313;
Powell *vs.* Pennsylvania, 127 U. S., 678;
Walling *vs.* Michigan, 116 U. S., 446;
Duncan *vs.* Missouri, 152 U. S., 377;
Morgan, etc., *vs.* The Board of Health, 118 U. S., 445;
Jacobson *vs.* Mass., Feb. 20, 1905.

The state not only has authority under its police power to make such needful rules and regulations for the protection of the health of its citizens as it may deem necessary; It may also regulate private business in a way so that the business of one man shall in no way become a nuisance to the people of the state. It may regulate the sale and use of intoxicating liquors, the sale of poisons, the sale of foods, etc., and it would seem that nothing is of greater im-
92 portance to the safety of the state, in addition to the regulation of the morals and health of its people, than to regulate and control its own money. In addition to the fact that said Act No. 1411 was enacted in accordance with express permission given by the Congress of the United States, this Court has already decided, in the case of Gaspas *vs.* Molina (5 Phil. Rep., 197), that the Philippine Commission possesses general powers of legislation for the Islands, and its laws are valid unless they are prohibited by some act of Congress, some provision of the Constitution, or some provision of treaty.

We are of the opinion, and so hold, that Act No. 1411 was enacted by the Philippine Commission with full power and authority so to do. We are of the opinion, therefore, and so hold, that the lower court committed no error in overruling the demurrer presented by the defendant.

With reference to the second assignment of error above noted, relating to the sufficiency of the proof adduced during the trial of the cause, we are of the opinion, and so hold, that the evidence adduced during the trial of the cause was sufficient to justify the findings of fact and the conclusions of the lower court.

An examination of the evidence adduced during the trial of the cause in the lower court shows the following facts to be true:

1. That on the 12th day of December, 1906, on board the steam-

ship "Taming" after the said ship had raised anchor and
93 was ready to sail out of the harbor of Manila for the port of Hongkong, there was found in the room occupied by the defendant the sum of 20,600 Philippine silver pesos, coined by authority of the act of Congress of the United States, March 2, 1903;

2. That the defendant was confronted with the fact that this amount of said money was found in his room, and that he then and there stated that the same had been brought into his room by a Filipino whose name he was unable to give; and that he did not know why the money had been placed there.

3. The money was not on the manifest of the ship when she came into the harbor some days before the said 12th day of December, neither was the said money on the manifest of the ship which had already been prepared for the trip to Hongkong on the said 12th day of December. The said money was taken charge of by W. H. Polley, a detective of the customs secret service of Manila, and was turned over to the Insular Treasurer of the Philippine Islands. The defendant was duly arrested and charged with the crime of attempting to export Philippine silver coin from the Philippine Islands contrary to law.

At the trial of the cause the defendant attempted to show that he had brought the money in question from Hongkong to be exchanged for certain Mexican coin and Spanish coin in Manila. These statements of the defendant were corroborated by a Chinaman called Wong Tai from Hongkong, and also by the testimony
94 of Juan On Hing of Manila. The said Wong Tai testified that he had sent the said 20,600 from Hongkong to Manila on the said steamship "Taming" for the purpose of buying from the said Juan On Hing old Spanish silver and Mexican silver; that said money was sent in the care of the defendant.

In support of the statements of Wong Tai the defendant presented an insurance policy or a duplicate copy of an insurance policy alleged to have been issued by a certain Japanese insurance doing business in the city of Hongkong. No proof was offered, however, to show that said duplicate copy of an insurance policy had actually been issued by said company. The prosecuting attorney of the city of Manila objected to the introduction of said duplicate policy upon the ground that it had not been sufficiently identified. This objection was overruled. No evidence was presented to show that said company ever, as a matter of fact, issued the said policy. In the absence of proof showing that the document had been issued by the proper authorities, the same should not have been admitted in evidence. The duplicate policy did not prove itself. It was dated on the 4th day of December, 1906. In support of the testimony of Wong Tai, the defendant also presented Juan On Hing as a witness. This witness testified that he had an arrangement with Wong Tai to exchange with him at a certain rate Spanish silver coin and Mexican silver coin for Philippine silver pesos, and that he
95 had an arrangement with a certain Filipino in Manila from whom he was to purchase said Spanish and Mexican coin. He could not remember, however, the name of the Filipino from

whom he was to purchase said coins; neither could he describe him, nor could he tell where the said Filipino resided. We do not believe the statements of these witnesses notwithstanding the fact that they seem to corroborate the statements of the defendant. Courts should not lightly regard the statements of witnesses under oath, but nevertheless when the testimony of witnesses seems to be unreasonable from every standpoint it should be weighed with care, when it comes loaded with the temptations of private interests and the impressions of personal penalties; if the defendant had not been guilty of attempting to violate the law, there would have been no occasion for him to have stated at the time the money was found in his room what were the true facts, and then there would have been no difference between his statements then and the statements he made at the time of the trial. These conflicting statements lend much suspicion to the veracity of the defendant as well as to the truth of the statements of the witnesses called in his behalf. The evidence also shows that Philippine silver coin was worth, at the time the coins in question were shipped, about 9 per cent. more in bullion than they were as money.

For all of the foregoing reasons, we are of the opinion, and so hold, that the sentence of the lower court should be affirmed with costs.

96 So ordered.

(Signed) E. FINLEY JOHNSON.

Concurring:

C. S. ARELLANO.
FLORENTINO TORRES.
VICTORINO MAPA.
A. C. CARSON.
JAMES F. TRACEY.

Charles A. Willard, concurs in the result.

Afterwards, to-wit, on the twentieth day of February, 1908, counsel for defendant moved for a rehearing upon the said decision of the Supreme Court rendered on the tenth day of February, 1908, which said motion was denied by the Court on the 21st day of February, an exception to said decision of date February 10th, 1908, and to the order of the Court of date February 21st, 1908, being on March 2nd, 1908, duly noted and allowed.

Afterwards, to-wit, on the twenty-fourth day of February, 1908, the following judgment was entered in said cause, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, Plaintiff and Appellee,
vs.
LING SU FAN, Defendant and Appellant.

Judgment Book 5 F. Register No. 3962.

97 This Court having regularly and duly acquired jurisdiction for the trial of the above entitled cause, submitted by both parties for decision, and this Court after having considered said cause, upon a review of the record, its decision and order in said cause having been filed on the tenth day of February, 1908.

By virtue of said order and decision, the sentence appealed from as rendered by the Court of First Instance of Manila of date the fifteenth of February, 1907, is hereby affirmed, together with the costs which amount to twenty four pesos (P24.00), the collection of which said sum the said Court of First Instance will effect.

It is also further ordered that the said cause be remanded to the Court of its origin for due and proper action and for corresponding effect.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

[Seal of Supreme Court of Philippine Islands.]

98 Afterwards, to-wit, *in* the second day of March, 1908, there was filed in the Office of the Clerk of said Supreme Court, in the above entitled cause, a petition for a writ of error, said petition being in the words and figures following, to-wit:

R. G. 3962.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

UNITED STATES, Plaintiff and Appellee,
vs.
LING SU FAN, Defendant and Appellant.

Petition for Writ of Error.

Comes now Ling Su Fan, defendant and appellant in the above entitled cause and represents:

I. That judgment has been rendered in said cause by which the judgment of the Court of First Instance of the City of Manila, Philippine Islands, convicting the petitioner Ling Su Fan, of the attempt

to export from the Philippine Islands, Philippine silver coins, has been affirmed, in violation of the Philippines Bill as appears from the accompanying assignment of errors.

II. Wherefore, petitioner prays that he be granted a Writ of Error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands with a supersedeas of the judgment and that upon the execution and approval of a bond in such sum
99 as may be deemed sufficient, conditioned as required by law, he be admitted to bail pending such Writ of Error, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

He also prays that the record of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

Manila, P. I., March 2nd, 1908.

(Signed) LIONEL D. HARGIS,
C. W. O'BRIEN,
Attorneys for Petitioner.

Afterwards, and on the same day, to-wit, on the second day of March, 1908, there was filed in said Clerk's Office of the said Court, an assignment of errors in said cause, which said assignment of errors is in the words and figures following, to-wit:

R. G. 3962.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

UNITED STATES, Plaintiff and Appellee,
vs.
LING SU FAN, Defendant and Appellant.

Assignment of Errors.

Comes now Ling Su Fan and says that in the record and proceedings in the above entitled cause, there is manifest error
100 in this, to-wit:

I. It appears that the Supreme Court erred in affirming the decision of the Trial Court, overruling the Defendant's demurrer to the complaint.

II. It appears that the Supreme Court erred — judging that the evidences are sufficient for convicting the accused.

III. It appears that the Supreme Court erred — judging that the Insurance Policy was erroneously admitted in evidence by the Trial Court.

IV. It appears that Ling Su Fan has been convicted without due process of law.

V. Wherefore the said Ling Su Fan prays that the judgment of

the Supreme Court of the Philippine Islands be reversed and the cause remanded to that Court with instructions to dismiss the prosecution against him.

(Signed) LIONEL D. HARGIS,
C. W. O'BRIEN,
Attorneys for Plaintiff in Error."

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court
101 of the Philipine Islands, before you, or some of you, between the United States, plaintiff and appellee and Ling Su Fan, defendant and appellant, a manifest error hath happened to the great damage of the said Ling Su Fan, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth day of July, 1908, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the seventh day of March, in the year of our Lord, one thousand nine hundred and eight.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Ling Su Fan, in the sum of six hundred pesos,
102 Philippine Currency, payable to the defendant in error, conditioned as required by law, to be approved by me, he shall be entitled to his liberty pending such writ of error.

Dated April 18th, 1908.

(Signed) FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands."

UNITED STATES OF AMERICA, *Philippine Islands:*

UNITED STATES, Plaintiff and Appellee,
vs.
LING SU FAN, Defendant and Appellant.

PHILIPPINE ISLANDS, *City of Manila, ss:*

Whereas, Ling Su Fan, the defendant and appellant in the above entitled cause, was convicted by the Supreme Court of the Philippine Islands of the attempted exportation of silver money from the Philippine Islands, and a writ of error having been allowed from the Supreme Court of the United States to the Supreme Court of the Philippine Islands to reverse the said judgment; and

Whereas, by an order made by the Honorable Florentino
103 Torres, a Justice of the said Supreme Court of the Philippine Islands, who allowed the said writ of error, that said Ling Su Fan has been allowed bail during the pendency of the said writ of error upon the filing of a bond in the sum of Six-hundred pesos, Philippine Currency.

Now Therefore, We, Ling Su Fan, as principal and Juan Ping San and William Kennedy, as sureties, jointly and severally, hereby undertake that the said Ling Su Fan shall pay the fine that the Supreme Court of the United States may direct, and that he shall present himself for Judgment, and that in the event the said cause shall be remanded for a new trial, he will appear before the Court to which the case may be remanded, and will obey the orders and processes of the same, and that in case of failure to comply with any or all of the said conditions, will pay to the United States the sum of Six-hundred pesos, Philippine Currency.

In witness whereof, we have signed these presents on the 21 day of April, 1908.

(Signed) LING SU FAN,
By C. W. O'BRIEN,
His Att'y.
(Signed) WILLIAM KENNEDY.
(Signed) JUIAM PING SAN.

PHILIPPINE ISLANDS, *City of Manila, ss:*

Before me, the undersigned authority on this date appeared personally Juan Ping San and William Kennedy, with certificates of registration numbers F. 1300167, issued at Manila on the
104 25th day of January, 1908, and No. F. 1326033, issued at Manila on the 16th day of March, 1908, respectively, and declared under oath that they are the persons whose names are subscribed to the foregoing bond and they own real property in the Philippine Islands, and that each of them is worth the amount specified in the undertaking over and above all just debts and obligations, and property exempt from execution.

(Signed) WILLIAM KENNEDY.
(Signed) JUIAM PING SAN.

Subscribed and sworn to before me by Juan Ping San and William Kennedy this 21 day of April, 1908,

(Signed) C. W. O'BRIEN,
[NOTARIAL SEAL.] *Notary Public.*

My Commission expires December 31st, 1908.

Approved:
(Signed) FLORENTINO TORRES,
Associate Justice, Supreme Court, P. I."

THE UNITED STATES OF AMERICA, *ss:*

To Attorney General for the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States to be holden at Wash-
105 ington, within one hundred and twenty days from the date of this citation, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Ling Su Fan is the plaintiff in error and the United States of America, the defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 21st day of April, 1908.

(Signed) FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

[Seal of the Supreme Court of the Philippine Islands.]

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 21st day of April, 1908.

(Signed) GREGORIO ARANETA,
Attorney General for the Philippine Islands."

106 [Seal Bearing "American Consulate General, Hongkong, China."]

COLONY OF HONGKONG, *City of Victoria, ss:*

S. Minami, Manager of Ataka & Co., 3, Queen's Road Central, Hongkong, being duly sworn said:

I am the duly authorized Manager of the firm of Ataka & Co., with offices at 3, Queen's Road Central, Hongkong; that the firm which I represent is the agent of the Nippon Marine Transport & Fire Insurance Company Limited having their head office at Osaka, Japan; that I did on the fourth day of December 1906 on behalf of said Insurance Company issue to Mr. Wong Tai, Insurance policy wherein and whereby I insured 20,600 pieces of silver coin, which said coin was declared to be shipped *to be shipped* from Hongkong to Manila on the steamship "Taming" sailing from Hongkong on

the fourth day of December 1906; that the signature appearing at the bottom of said Insurance Policy is the signature of Ataka & Co., signed by myself as agent, all of which will more fully appear in the duplicate of said Insurance Policy, which is attached hereto and made a part hereof.

(Signed) S. MINAMI.

On this eleventh day of January, 1907, at the Consulate General of the United States of America at Hongkong, personally appeared the above named S. Minami, who subscribed the foregoing affidavit in my presence and made solemn oath that the statements
107 contained therein are true.

Witness my hand and seal of the Consulate General this eleventh day of January 1907.

(Signed) AMOS P. WILDER,
Consul General of the United States of America at Hongkong."

(NOTE.—American Consular Service Fee Stamp of the denomination of $2.00 is hereto affixed.)

108 DEFENDANT'S EXHIBIT No. 1.

The Nippon Marine Transport and Fire Insurance Company, Limited.

(Nippon Kaisho Unso Kwasai Hoken Kabushki Kaisha.)

Head Office, Osaka, Japan.

Duplicate.
Hongkong.

Whereas (Messrs.) Mr. Wong Tai, has (have) represented to The Nippon Marine Transport and Fire Insurance Company, Limited, that he is (they are) interested in or duly authorised as Owner Agent or otherwise to make the insurance hereinafter mentioned and described with the said Company and has (have) promised or otherwise obliged himself (themselves) to pay forthwith for the use of the said Company at the Office of the said Company the sum of dollars as per margin as a Premium or Consideration at and after the rate as *As* per margin per-cent. for such Insurance.

Now this Policy of Insurance Witnesseth that in consideration of the premises and of the said Premium or Consideration above mentioned the said Company promises and agrees with the said above mentioned his (their) Executors Administrators and Assigns that the said Company shall pay and make good all such losses and damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the sum of Dollars Twenty One Thousand only. hereby insured which
109 Insurance is hereby declared to be upon Pesos (Silver Coin) 20,600 Pieces only. so valued shipped in the good Steamer or

Ship called the S. S. "Taming" Burthen — Tons or thereabouts whereof is Master for the present Voyage —— —— or whosoever else shall go for Master is the said Vessel or by whatsoever other Name or Names the said Vessel or the Master thereof is or shall be named or called Beginning the Adventure upon the said Goods and Merchandise from the loading thereof on board the said Vessel lost or not lost at and from the Port of Hongkong to the Port of Manila. with liberty to touch stay and trade at all usual intermediate Ports and Places covering transhipment into any Steamer or Steamers including Risk of Craft or Boats at and from the Ship and to continue and endure until the said Goods Merchandise or Treasure shall be safely delivered from on board the said Vessel at the aforesaid Port. Touching the Adventures and Perils which the said Company is content to bear and take upon them in this Voyage they are of the Seas Men of War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Counter Mart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition and Quality soever (excepting as hereafter mentioned) Barratry of the Master and Mariners and of all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the said Goods and Merchandise or any part thereof And in case of Any Loss or Misfortune it shall be lawful to the Assured his (their) Factor Servants or Assigns to use labour and travel for in and about the Defence Safeguard and
110 Recovery of the said Goods and Merchandise or any part thereof without prejudice to this Assurance to the Charges whereof the said Company will contribute.

Salt Saltpetre Fur Hide Skins Hemp Flax Sugar Tobacco Jag-ry Fruits Rice Corn Flour Grain Pulse Ghee Seeds all kinds of Spirits of Liquors Oils and Other Liquids shall be and are warranted free from Average under Ten Per Cent. Tea and Silk Free from Average under Three Per Cent. and all other goods together with the Freight and Provisions of all kinds free from Average under Five Per Cent. unless General or occasioned by the Ship or Vessel being stranded sunk or burnt.

An exception is hereby declared against all Risks and Losses arising from Detention Seizure or any Act or Acts of any Government within the acknowledged limits of its own coasts in consequence of the Vessel being engaged in any Illicit or Contraband Trade also against any Risks or Accidents from Gunpowder as Cargo.

It is expressly declared and agreed that no acts of the Assurer or Assured in Recovering Saving or Preserving the Property Assured shall be considered as a Waiver or Acceptance of Abandonment.

Stranding or Grounding in canals harbours or tidal rivers or in the Suez Canal shall not be considered a Stranding under this Policy.

General Average and Salvage Charges payable according to foreign statement or per York Antwerp rules if in accordance with the contract of affreightment.

111 This Company is not liable for Loss arising from Leakage or Breakage of or to any Liquid or Liquid package.

In case of damage to the Interest — Assured immediate Notice is to be given to the Representative of the Company at the Port of Destination M. Lloyd's Surveyor or Custom House in order to prompt adjustment of all claim.

It is agreed that the Payment of Losses and Averages due under this Policy shall be made immediately upon proof thereof by the Agent of the Company M. Ataka & Co. at Hongkong, at the exchange of —— agreeable to the tenor of this policy and according to the established practice there in such cases.

In witness whereof, I (We) the Agent of the said Company at Hongkong have hereunto subscribed my (our) name this 4th day of Decemver in the year One Thousand Nine Hundred & six to 2 Policies of the same tenor and date one of which being accomplished the other to stand void.

(Signed) Per pro ATAKA & CO.,
S. MINAMI,
Agents The Nippon Marine T. & Fire Ins'ce Co., Ld.

Exd.
S. M."

This Exhibit bears the following marginal notes:

"No. 248, Claims payable in Hongkong @ exchange of ——. Amount Insured, $21,000. Premium @ 20c. per cent. $42.—Warranted Total Loss only, when the ship sunk, excluding lighters' risks.

Warranted free of Capture Seizure and Detention by Any Kinks Princes Rulers People or Tripes and the consequence thereof
112 or of any attempt thereat (piracy excepted) and also from all consequences of Riots Civil Commotions Hostilities or Warlike Operations whether before or after the Declaration of War.

In the event of damage occurring during the voyage no claim for average will be paid under this Policy unless notice of the same is given to the Agent of the Company previous to the Survey and the Certificate of Survey be signed by the Agent of the Company at the port of discharge or by his constituted Surveyor.

All policies issued abroad and made payable in the United Kingdom are required by law to have a Government Stamp within ten days after daye of receipt in the United Kingdom.

Endorsements: "No. —. Per ——. Voyage ——. Amount —. Ataka & Co. (also in Japanese Characters) Authorised Agents for the Certification of Losses and Adjustments."

113 UNITED STATES OF AMERICA, *88:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between the United

States, plaintiff and appellee, and Ling Su Fan, defendant and appellant, a manifest error hath happened to the great damage of the said Ling Su Fan, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth day of July, 1908, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the seventh day of
114 March, in the year of our Lord, one thousand nine hundred and eight.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Ling Su Fan, in the sum of six hundred pesos Philippine Currency, payable to the defendant in error, conditioned as required by law, to be approved by me, he shall be entitled to his liberty pending such writ of error.

Dated April 18th, 1908.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

115 THE UNITED STATES OF AMERICA, *ss:*

To Attorney General for the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Ling Su Fan, is the plaintiff in error, and the United States, the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 21st day of April in the year of our Lord, nineteen hundred and eight.

FLORENTINO TORRES,
Associate Justice of the Supreme Court of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 21st day of April, 1908.

GREGORIO ARANETA,
Attorney-General for the Philippine Islands.

116 THE UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing one hundred and fifteen typewritten pages constitute a true and correct transcript of the record in the case of Ling Su Fan, plaintiff in error, *vs.* The United States of America, defendant in error, including the original writ of error, allowance thereof and citation.

In witness whereof, I have hereunto signed my name and affixed the seal of the said Supreme Court of the Philippine Islands, this second day of May, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 21,247. Philippine Islands supreme court. Term No. 451. Ling Su Fan, plaintiff in error, *vs.* The United States. Filed July 1st, 1908. File No. 21,247.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1909.

LING SU FAN, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

STATEMENT OF THE CASE.

This is a criminal prosecution brought in the Philippine Islands upon the following information (Record, page 42):

"The undersigned accused Ling Su Fan of the criminal offense of attempting to export Philippine silver coins from the Philippine Islands contrary to law, committed as follows:

"That on or about the 12th day of December, 1906, in the City of Manila, Philippine Islands, *Philippine Islands*, the said Ling Su Fan was freight clerk, supercargo, comprador and person in charge of all shipments of freight on board the steamship *Taming*, which said steamship *Taming* was then and there about to depart from the port of Manila, Philippine Islands, to the port of Hong Kong; that the said Ling Su Fan did then and

there wilfully, unlawfully and feloniously, place, conceal and hide the sum of Twenty Thousand, Six Hundred (20,600) Pesos in Philippine silver coins, coined by authority of the Act of Congress approved March 2, 1903, in his stateroom on board the said steamship *Taming* with the intent of exporting the said Philippine silver coins from the Philippine Islands to the port of Hong Kong, and did then and there attempt to export the said Philippine silver coins from the Philippine Islands to the said port of Hong Kong;

Contrary to the provisions of act No. 1411 of the Philippine Commission.

(Signed) W. H. POLLEY."

The Act of March 2, 1903 (32 Stats., 952), is "An Act to establish a standard of value and provide for a coinage system in the Philippine Islands." The Sixth Section of that act provides, among other things, as follows:

"That the coinage authorized by this act shall be subject to the conditions and limitations of the provisions of the Act of July first, nineteen hundred and two, entitled 'An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes,' except as herein otherwise provided; and the government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said Act of July first, nineteen hundred and two, to maintain the value of the silver Philippine peso at the rate of one gold peso," * * *

and, following, provides for the issuance of temporary certificates of indebtedness to maintain parity between the silver and gold peso.

The Act of July 1, 1902 (32 Stats., 691 *et seq.*) provides by its Fifth Section (page 692) as follows:

"That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property

without due process of law, or deny to any person therein the equal protection of the laws."

* * * * * * *

"That no person shall be held to answer for a criminal offense without due process of law;"

* * * * * * *

"That the right to be secure against unreasonable searches and seizures shall not be violated."

By Law No. 1411, of date of November 17, 1905, of the Civil Commission, it was enacted as follows (Record, page 45):

"An Act for the purpose of maintaining the parity of the Philippine currency in accordance with the provisions of Sections One and Six of the Act of Congress, approved March 2, 1903, by prohibiting the exportation from the Philippine Islands of the Philippine silver coins and for other purposes."

"SECTION 1. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the Act of Congress approved March 2, 1903, or the bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion, which is exported or of which the exportation is attempted subsequent to the passage of this Act and contrary to its provisions, shall be liable to forfeiture, under due process of law, and one-third of the sum or value of the bullion so forfeited shall be payable to the person upon whose information, given to the proper authorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government and accrue to the gold standard fund. Provided, That the prohibition herein contained shall not apply to sums of P. 25.00 or less, carried by passengers leaving the Philippine Islands."

"SEC. 2. The exportation or attempt to export Philippine silver coins or bullion made from such coins from the Philippine Islands, contrary to law, is hereby declared to be a criminal offense, punishable, in addition to the forfeiture of the said coins or bullion as above provided,

by a fine not to exceed P. 10,000.00 or by imprisonment for a period not to exceed one year, or both, in the discretion of the Court" (Record, page 46).

On or about the 20th day of December, 1905, the plaintiff in error was arrested upon the above information and was subsequently tried, convicted and sentenced in the Court of First Instance in the Philippine Islands, which action was affirmed by the Supreme Court of the Philippine Islands, and thereupon, by writ of error, the case has been brought to this Court.

It is not disputed that at the time of the filing of the information plaintiff in error had in his possession twenty thousand six hundred pesos on board the British merchant steamer *Taming*, then lying in the port of Manila. Evidence was offered at the trial which the Court below refused to believe, conclusively showing, as plaintiff in error contends, that the money was brought from Hong Kong, China, by the plaintiff in error on the *Taming* and never left the ship while in port. This money was not upon the ship's manifests.

Assignments of Errors.

In addition to the five assignments of errors set out on pages 54–55 of the Record, plaintiff in error assigns as follows:

VI.

That the Civil Commission was without power to inhibit the exportation of pesos coined under the Act of Congress approved March 2, 1903 (32 Stats., 952).

VII.

That the decision of the Supreme Court of the Philippine Islands is against the weight of evidence, and without authority of law.

ARGUMENT.

Lack of Power of the Philippine Commission to Enact Law No. 1411.

The Court below rests its decision sustaining the power of the Civil Commission in the premises, mainly upon the "Police powers of the State" (Record, page 40).

In its opinion the Supreme Court of the Philippine Islands says on this subject:

"The police power of the State may be said to embrace the whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others. The police power of the State includes not only public health and safety but also the public welfare, protection against impositions, and generally the public's best interest. It is so extensive and all-pervading that Courts refuse to lay down a general rule defining it, but decide each specific case on its own merits (Harding *v.* People, 32 Lawyers' Rep. Anno., 445). This power has been exercised by the State in controlling and regulating private business even to the extent of the destruction of property of private persons when the use of such property became a nuisance to public health and convenience.

"(Slaughter-house Cases, 16 Wallace, 36);
Minnesota *v.* Barber, 136 U. S., 313;
Powell *v.* Pennsylvania, 127 U. S., 678;
Walling *v.* Michigan, 116 U. S., 446;
Duncan *v.* Missouri, 152 U. S., 377;
Morgan, etc., *v.* The Board of Health, 118 U. S., 445;
Jacobson *v.* Mass., February 20, 1905.

"The State not only has authority under its police power to make such needful rules and regulations for the protection of the health of its citizens as it may deem necessary. It may also regulate private business in a way so that the business of one man shall in no way become a nuisance to the people of the State. It may regulate the sale and use of intoxicating liquors, the sale of poisons, the sale of foods, etc., and it would seem that nothing is of greater importance to the safety of the State in addition to the regulation of the morals and health of its people, than to regulate and control its own money. In addition to the fact that said Act No. 1411 was enacted in accordance with express permission given by the Congress of the United States, this Court has already decided, in the case of Gaspas *v.* Molina (5 Phil. Rep., 197), that the Philippine Commission possesses general powers of legislation for the Islands, and its laws are valid unless they are prohibited by some act of Congress, some provision of the Constitution, or some provision of treaty.

"We are of the opinion, and so hold, that Act No. 1411 was enacted by the Philippine Commission with full power and authority so to do. We are of the opinion, therefore, and so hold, that the lower Court committed no error in overruling the demurrer presented by the defendant" (Record, pages, 49–50).

While it is true that the Courts have not defined the limit of the police power under the terms of any general rule, that power has a limit, which has been defined by this Court in the case of Lawton *v.* Steele (March 5,1894), 152 U. S., 133–143. In announcing the judgment of this Court in that case Mr. Justice Brown said:

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the Appellate Courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction of abatement, by summary proceedings,

of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill-fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. Barber *v.* Connolly, 113 U. S., 27 (28, 923); Kidd *v.* Pearson, 128 U. S., 1 (32, 346). To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts. Thus an act requiring the master of a vessel arriving from a foreign port to report the name, birthplace and occupation of every passenger, and the owner of such vessel to give a bond for every passenger so reported, conditioned to indemnify the State against any expense for the support of the persons

named for four years thereafter, was held by this Court to be indefensible as an exercise of the police power, and to be void as interfering with the right of Congress to regulate commerce with foreign nations. Henderson *v.* Wickham, 92 U. S., 259 (23, 543). A similar statute of California, requiring a bond for certain classes of passengers described, among which were 'lewd and debauched women,' was also held to show very clearly that the purpose was to extort money from a large class of passengers, or to prevent their immigration to California altogether, and was held to invade the right of Congress. Chy Lung *v.* Freeman, 92 U. S., 275 (23, 550). So in Hannibal and St. J. R. Co. *v.* Husen, 95 U. S., 465 (24, 527), a statute of Missouri which prohibited the driving of Texas, Mexican or Indian cattle into the State between certain dates in each year was held to be in conflict with the commerce clause of the Constitution; and not a legitimate exercise of the police powers of the State, though it was admitted that the State might for its self-protection prevent persons or animals having contagious diseases from entering its territory. In Rockwell *v.* Nearing, 35 N. Y., 302, an act of the legislature of New York, which authorized the seizure and sale without judicial process of all animals found trespassing within private enclosures, was held to be obnoxious to the constitutional provision that no person should be deprived of his property without due process of law. See also Austin *v.* Murray, 16 Pick., 121; Watertown *v.* Mayo, 109 Mass., 315, 12 Am. Rep., 649; Butchers Benev. Asso. *v.* Crescent City L. S. L. & S. H. Co. ('Slaughter-house Cases'), 83 U. S., 16 Wall., 36 (21, 394); *Re* Cheesebrough, 78 N. Y., 232; Brown *v.* Perkins, 2 Gray, 89. In all these cases the acts were held to be invalid as involving an unnecessary invasion of the rights of property, and a practical inhibition of certain occupations harmless in themselves, and which might be carried on without detriment to the public interests."

The rule here laid down to justify the State in interposing its authority in behalf of the public is:

First: It must appear that the interests of the public

generally, as distinguished from those of a particular class, require the interference, and

Second: That the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

The limit of interference with the rights of individuals was further defined by the Chief Justice in a dissenting opinion in this case (page 144) concurred in by Mr. Justice Field and Mr. Justice Brewer, wherein the Chief Justice said:

"The police power rests upon necessity and the right of self-protection, but private property cannot be arbitrarily invaded under the mere guise of police regulation, nor forfeited for the alleged violation of law by its owner, nor destroyed by way of penalty inflicted upon him, without opportunity to be heard."

The inhibition upon the use of property imposed by the act of the Civil Commission passes beyond the limit fixed by Mr. Justice Brown under both the rules laid down. Even if the exportation of silver pesos tended to enhance their value above that of the gold pesos, thus disturbing the parity between the two, which is denied, a remedy not impairing the individual right of property was at hand and has been applied to keep coin at home for ages; that of reducing the bullion value of the coin. Because such an amount of silver bullion was improvidently incorporated in the silver peso as to make it valuable for exportation, thus inducing such trade, is no sufficient reason for oppressing the individual holder of these coins. The want of a proper interest of the "Public generally" and the absence of a "reasonable necessity" are apparent. No necessity existed for the infringement of the rights of private property. The inducement to carry the coins out of the country wholly disappears

by an adjustment of the bullion value to commercial conditions, which is one of the functions of government. Money is coined as a medium of exchange. That object is defeated by legislation curtailing its use. The paramount "public interest" lies in a known and accepted medium of exchange supplied by the coin of the realm, not in restrictions upon the use of that coin as a medium of exchange.

Tried by the rule laid down by the Chief Justice, the arbitrary invasion of private property by the enactment against exportation is apparent, in that the possessor of silver pesos, desiring to remove their full value, as might be necessary to the enjoyment of the use of his property, would, under the law of the Civil Commission, be compelled to convert his silver pesos into exchange at such charge and depletion as would meet the views of money brokers, thus, by direct legislation, depriving the owner of the possession of his property, to the extent of the rate of exchange, and by the same legislation, that part of which the owner was thus deprived would become vested in the money broker. It is true that from this deprivation of the use of an individual's money twenty-five pesos were excepted. But why twenty-five? The allowance to the individual of the free use of a defined part of his money accentuates, rather than alleviates, the oppression.

Upon the power of a government having a written Constitution, to divest one individual of his property by direct legislation and invest another with such property this Court has said in the case of the C., B. & Q. R.R. Co. *v.* Chicago (166 U. S., 235), by Justice Harlan as follows:

"In Davidson *v.* New Orleans (96 U. S., 97–108), above cited, it was said that a statute declaring in terms, without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in another person, would, if effectual, deprive

the former of his property without due process of law, within the meaning of the 14th Amendment. See also Missouri P. R. Co. *v.* Nebraska, Board of Transportation, 164 U. S., 403, 417 (*ante*, 489, 495). Such an enactment would not receive judicial sanction in any country having a written Constitution distributing the powers of government among three co-ordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such Constitution. It would be treated, not as an exertion of legislative power, but as a sentence—an act of spoliation. Due protection of the rights of property has been regarded as a vital principle of republican institutions. 'Next in degree to the right of personal liberty,' Mr. Broom in his work on Constitutional Law says, 'is that of enjoying private property without undue interference or molestation,' page 228. The requirement that the property shall not be taken for public use without just compensation is but 'an affirmance of a great doctrine established by the common law for the protection of private property.' "

The effect of the inhibition to export pesos from the Philippine Islands is to legislate the difference in exchange out of the pocket of the owner of the pesos and into that of the money broker.

Summarizing, it is contended that the interests of the public generally do not require an interference with the rights of private property attempted to be authorized by Act No. 1411 of the Philippine Commission, that the means adopted for the retention of silver in the Islands are unnecessary, that they are unduly oppressive upon individuals, and that the act arbitrarily invades the rights of private property, destroying such rights by directly legislating property out of the possession of one person and into the possession of another, and by destroying the property rights of the individual by way of penalty without opportunity to be heard, particularly in that by such legislation the individual is allowed the choice

of leaving his money in the Philippine Islands or subjecting himself to the uncertain and erratic course of rates of exchange in removing it, and that to uphold Act No. 1411 of the Philippine Commission would be a departure from the structure and spirit of our institutions.

The Act of March 2, 1903, *supra*, authorizing the Civil Commission of the Philippine Islands to maintain the value of the silver Philippine peso at the rate of one gold peso, specifically limited the power of the Civil Commission to adopting only such measures to accomplish that end as were not inconsistent with the Act of July 1, 1902, *supra*. The Act of July 1, 1902, copied the 14th amendment of the Constitution of the United States and made it applicable to the Philippine Islands. It is submitted that the law No. 1411 of date of November 17, 1905, enacted by the Civil Commission, adopted such measures to maintain the value of the silver peso as are clearly inconsistent with said Act of July 1, 1902.

Decision of the Court Below Against the Weight of Evidence, and Without Authority of Law.

The evidence upon which the conviction of the plaintiff in error was had is that of his alleged confession, being that of one who does not speak English, but who has some knowledge of "pidgin" English (Record, page 7).

Mr. Polley says, in his examination in chief (Record, page 5), as follows:

"A. I asked him where he got the money, and at first he seemed to know nothing about it. Then he said that it was brought aboard by some Filipinos, and that it came in two different launches, but that he did not know who the Filipinos were. I asked him what he was going to do with this money, and he said it was for some party in China, but he did not know who. Then afterwards he again denied knowing anything about who brought the money on board."

In answer to the question as to who was present when he (Polley) found the money, he says (Record, page 6):

"A. The Chino and a Filipino Secret Service man named Juan Lankin, and the first officer of the ship was looking into the room."

On cross-examination, he says (Record, page 7), that the last statement he (plaintiff in error) made regarding the money was that he did not know how it got there.

Juan Lankin, a Filipino Secret Service Custom House officer, says (Record, page 9):

"A. Mr. Polley asked him to whom this money belonged, and the comprador answered that that money belonged to a person here in Manila, but that he did not know who the owner was, and that it was brought on board by some Filipinos to be delivered in Hong Kong,"

and, in answer to the question as to who was present when Mr. Polley found the money, he said (Record, page 9):

"A. The captain, the first officer, the inspector and the Customs Guard."

On cross-examination, this witness said (Record, page 10):

"A. Mr. Polley asked this comprador to whom this money belonged and who took it on board. He said the Filipinos took it on board. He was then asked whether he knew the owner, and he said that he knew the owner in Hong Kong but in Manila he did not know."

George Pinkham, a Customs House official, says (Record, pages 12 and 13):

"A. Yes, sir, Captain Oughterbridge asked him something and he did not answer, and then after being pressed he said that the money was brought on while he was out

of the room, that he did not know who was the owner of the money. The captain then said: 'Why this is a ton of money, you can't tell me a story like that.' Then the Chino said it was brought on board by several Filipinos in several boats or launches, but that he did not know who they were.

"Q. Do you remember his having said anything else about this money, how it came there, or what he was going to do with it?

"A. He said it did not belong to him, that is about all. Then Captain Oughterbridge wanted to know what he was going to do with it, and he said that he did not know."

On cross-examination, this witness says, in reply to a question (Record, page 13):

"A. Yes, sir, Mr. Polley did not put any questions, only Captain Oughterbridge and myself, the captain was the first one who asked him where in the deuce did all this money come from, and the Chino then said that when he was out of his room somebody had put the money in there, and that he did not know who they were.

"Q. In what language did he speak?

"A. He spoke pidgin English, and said that he went outside and came back and when he came back he found the money there.

"Q. Did he say to whom it belonged?

"A. He said it did not belong to him.

"Q. Did he specify in any way or hint as to who the money belonged to?

"A. That is all he said, and that he knew the owner in Hong Kong.

"Q. And that he did not know the owner in Manila?

"A. Yes, sir, he said he did not know to whom the money belonged, that it was not his and that he did not know who put it in the room, that he did not know anything about it" (Record, page 14).

This is the sum total of the testimony upon which this plaintiff was convicted. It is submitted that it is wholly insufficient upon which to base a conviction. The plain-

tiff in error did not speak English—he had some knowledge of pidgin English (Pidgin-English—Webster), which is a jargon of English intermixed with Chinese, Portuguese, and Malay words expressed in Chinese idioms, used in Chinese and other commercial cities of the Far East in ordinary intercourse of natives and foreigners. No interpreter was present or used.

Attention is invited to the conflicting statements of the prosecuting witnesses respecting those who questioned the accused at the time of the alleged confessions. The witness Polley, for prosecution, swears he put questions (Record, page 5); Juan Lankin, for prosecution, native Filipino, swears Polley put questions, but this witness heard no conversation between Captain Oughterbridge and accused (Record, page 10). He swears he was present all the time Mr. Polley was present. Witness George Pinkham, for prosecution, swears Polley had a conversation with accused of about half a minute (Record, page 13), but he also swears that Mr. Polley did not put any questions, "only Captain Oughterbridge and myself" (Record, page 13). The confusion respecting by whom the questions were propounded as among the government inspectors is indicative of the want of exactitude in the narrative of what occurred.

It is remarkable that Captain Oughterbridge was not called on the part of the Government. On his examination, on behalf of plaintiff in error, Captain Oughterbridge says (Record, page 16):

"Q. State your name?
"A. Arthur William Oughterbridge.
"Q. What is your occupation?
"A. At the present time master mariner of the steamship *Taming* of the China Navigation Company of London.
"Q. Between what ports do you ply?

"A. Hong Kong and Manila.

"Q. Where was this vessel on the afternoon of the 12th day of December, 1906?

"A. She was in Manila the day of the trouble, outside the breakwater.

"Q. Do you remember the occasion of the seizure of some twenty thousand pesos?

"A. Yes, sir.

"Q. Did you have any conversation with the comprador at the time of the seizure?

"A. I was in my room reading, and the first officer, who is now in the courtroom, came up and said that there was trouble with the Customs, to come and see about it. I said all right, what is it, and the first officer said that they had found a lot of money in the comprador's room, that he had never seen so much in his life. So I went down, and putting on my official look, because it does not pay my firm to have trouble with the Customs or anywhere else, I said: 'What is this you are up to,' and the comprador began to jabber and chaw and seemed to lose his head and did not know what he was talking about. One moment would say that the money came on board in Hong Kong, and then again that some one must have put it in his room here while he was in the other end of the ship. I could make nothing out of what he said."

It thus appears that the plaintiff in error, when confronted by the captain of the ship in his official capacity with his official look upon him, when asked, "What is this you are up to," in his fright and confusion, made a number of conflicting statements, and that the captain could make nothing out of what he said.

The captain is a witness without interest. But there is the unimpeached, uncontradicted, though unaccepted, testimony of the plaintiff in error (Record, pages 18 and 19), of one Juan On Hing (Record, page 23), and one Wong Tai (Record, pages 31 to 37), and the evidence of the insurance policy (Record, pages 57, 58 and 59), which was admitted by the Court of First Instance (Record,

page 33), disclosing that the money had been taken on board the *Taming* at Hong Kong, a free port (Captain Oughterbridge, Record, page 17).

On this point the witness Wong Tai, while not disinterested, from the character of his testimony, tells a straight story. Recounting the transaction with Ling Su Fan, he testifies as follows (Record, page 31):

"Q. Have you had any business with Ling Su Fan in the last three or four months?

"A. I talked it over with him two or three months ago.

"Q. Tell the Court what the nature of that business was?

"A. First he came to my place and told me that there was a good chance of making money by buying old coin in Manila.

"Q. Then what happened?

"A. He told me that with 97 pesos Conant I could buy 100 pesos Mex., and that for 82 pesos Conant I could buy 100 pesos Spanish coin.

"Q. When did he tell you this?

"A. On the afternoon of the 1st day of December.

"Q. Then what did you do?

"A. I figured out that I could make seventy pesos on the thousand.

"Q. Then what did you do?

"A. I asked him how much he could buy and he said more than 20,000 pesos, and that there was a very good chance to make money if we could get the capital.

"Q. Go ahead and tell all the business you did.

"A. Then I made arrangements to find the money and when I found some Philippine Currency in the market I offered to buy.

"Q. Did you buy it?

"A. Yes, sir, I bought 6,800 pesos the first time.

"Q. What did you pay for it?

"A. With 965 dollars Hong Kong currency I buy 1,000 pesos Conant in Hong Kong.

"Q. What day was this?

"A. On the afternoon of the 1st day of December, 1906.

"Q. Did you buy any more money?

"A. Yes, I then bought another 3,000 pesos at 968.75 for the 1,000.

"Q. When did you buy this?

"A. On the same day, later on in the afternoon.

"Q. Did you buy any more?

"A. Then on December 2nd, I buy another 6,000 pesos at 970 for the 1,000.

"Q. Did you buy any more?

"A. And another time I bought 4,800 pesos at 971.25 for the 1,000.

"Q. What did you do with this money?

"A. I bought it from the house of Yau Yoc, a Hong Kong money changer, and told them to pack it up for me in rolls of fifty pesos each.

"Q. What did you do with it?

"A. Then on Monday morning, the 3d, I brought 10,000 of these pesos on board the *Taming*.

"Q. When you took them on board the *Taming* what did you do?

"A. This money was put up in gunny-sacks and delivered to the comprador; I gave it into his hands and told him to stow it away in his box.

"Q. What did you do with the rest of the money?

"A. Then on Tuesday, on the morning of the 4th, I sent another 5,000 pesos, and on the same day in the afternoon I sent 5,600 pesos.

"Q. To whom did you deliver that money?

"A. To Ling Su Fan, the comprador, and then he gave me a receipt covering this 20,600 pesos.

"Q. How did you take this money on board the *Taming*.

"A. I went on board myself with an employee of the money changer, and when I delivered the money to the comprador he gave me a receipt, and at the same time I showed him a copy of the insurance policy and told him I had insured this money; then on the 4th after I had delivered all the money to him I showed him the original policy, and then after delivering this money I left the ship when she was about to sail, and before I left I told him that if he could buy any old Mexican money or

old Spanish money at a proper rate that I would allow him a commission after paying the freight.

"Q. Do you know who the man was that the defendant was going to buy this money from?

"A. I remember he told me that he had a friend in Manila named Juan On Hing, and could buy this old currency from him.

"Q. Did you give the defendant any instructions when you turned this money over to him as to what he should do with it?

"A. No, sir, I only expected he would succeed, and when the steamer arrived again at Hong Kong Ling Su Fan came to me and was very much frightened, and told me the money had been seized by the Customs authorities in Manila, and I became excited also over the matter.

"Q. What did you do when you knew the money had been seized?

"A. I asked him why he did not buy the old currency, and he told me that the man had raised the rate four per cent.

"Q. Did you authorize him to bring the money back?

"Mr. Blanchard: Objected to as leading.

"The Court: Yes, but you cannot get at it in——other way. Let him answer.

"A. No, sir, I told him that there was still a chance of paying a little higher, and if he could not get it that way that he must try his best to bring it back to me, and then he promised me that he would do the best he could to get it back, and then in order that he might explain the matter I gave him the insurance policy to show.

"Q. Is this the insurance policy you refer to (showing to witness)?

"A. Yes, sir.

"Q. What was this policy taken out for?

"A. For 21,000 pesos.

"Mr. Hargis: I offer this policy in evidence, and ask that it be marked Exhibit D 1.

"Mr. George: I object to the admission of the policy as incompetent, irrelevant and immaterial, and certainly the affidavit attached to it is hearsay.

"The Court: The affidavit is not a part of the policy, it merely certifies that the man who signed the policy was an agent of that particular insurance company and was entitled to sign for it.

"Mr. Hargis: I have not offered the affidavit in evidence.

"Mr. George: I object on the further ground that the signature is not proven.

"The Court: That is not necessary" (Record, page 33).

The only wholly disinterested witnesses whose testimony may be regarded as material, are Captain Oughterbridge and Juan On Hing. Wong Tai is an interested witness in that the money belonged to him, and the defeat of the Government in its prosecution means the restoration to him of that money. The inspectors were interested in the informer's share, being one-third of the pesos seized, the other two-thirds going to the Philippine Government to accrue to the gold standard fund, these inspectors being officers of the Philippine Government.

The Court below failed to consider the insufficiency of the alleged confessions of the accused, the interest of the prosecuting witnesses, and also failed to consider that neither the testimony of Juan On Hing nor Wong Tai had been impeached or attempted to be impeached.

The testimony upon which plaintiff in error was convicted rests upon the accused's conflicting statements when arrested, which were so conflicting that they cannot be fairly regarded as a confession, and out of which Captain Oughterbridge, who did the questioning, could make nothing, as he has testified.

The evidence is not sufficient to overcome the presumption of innocence, even eliminating the unimpeached testimony of Juan On Hing and Wong Tai.

VARIANCE.

In the light of the undisputed testimony that these pesos were brought from the port of Hong Kong in the *Taming* for a legitimate and proper purpose; that the *Taming* is a British bottom; that the pesos remained in British territory and were never transferred to the Philippine Islands, and considering the failure of the information to charge that the pesos were removed from the soil of the Philippine Islands to the *Taming*, it is contended that there is a fatal variance between the information and the proof.

MARION BUTLER,
J. M. VALE,
LIONEL D. HARGIS,
For Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

LING SU FAN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 191.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The complaint charged that plaintiff in error, while comprador of a certain steamship *Taming*, when in the port of Manila, placed, concealed, and hid the sum of 20,600 pesos in Philippine silver coin, coined by authority of the act of Congress approved March 2, 1903, in his stateroom on board of said ship, with the intent of exporting same from the Philippine Islands to the port of Hongkong, China, and also that he attempted to export said coins (R., 2, 3). A demurrer was filed thereto, one ground being that the complaint was contrary to the

provisions of the Fourteenth Amendment to the Constitution of the United States, and to paragraph 1, section 5, of the act of Congress of July 1, 1902 (R., 3). The demurrer was overruled (R., 4).

The case was thereupon tried, and plaintiff in error was convicted of the offense charged, and was sentenced to prison for a period of sixty days and fined in the sum of 200 pesos. (R., 39, 41.) From this judgment an appeal was prosecuted to the Supreme Court of the Philippine Islands, and the judgment was there affirmed, the court rendering a lengthy opinion in support of its decision. (R., 43–52.)

The acts of Congress and the acts of the Philippine Commission, upon which the information was drawn, are as follows:

By the act of July 1, 1902, chapter 1369, sections 76 et seq. (32 Stat., 691–710), Congress authorized the government of the Philippine Islands to establish a mint in the city of Manila for coinage purposes, and to enact laws for its establishment and for the striking of certain coins.

By the act of March 2, 1903, chapter 980 (32 Stat., 952), Congress declared that the gold peso, consisting of 12.9 grains of gold, nine-tenths fine, should be the unit of value in the Philippine Islands, and authorized the striking of other coins; and in section 2 thereof provided:

> That in addition to the coinage authorized for use in the Philippine Islands by the act of July first, nineteen hundred and two, entitled

"An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos, for use in said islands, a silver coin of the denomination of one peso and of the weight of four hundred and sixteen grains, and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be of pure metal and one hundred of alloy, and the alloy shall be of copper.

Section 6 of this act further provided:

> That the coinage authorized by this act shall be subject to the conditions and limitations of the provisions of the act of July first, nineteen hundred and two, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," except as herein otherwise provided; *and the government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said act of July first, nineteen hundred and two, to maintain the value of the silver Philippine peso at the rate of one gold peso;*

and, as a specific measure for maintaining the parity between the silver and gold pesos, this section authorizes the issue of certificates of indebtedness bearing interest, and payable at periods of time and in the manner therein set forth.

Subsequently, assuming that they had the authority to do so under the foregoing act of Congress, the Philippine Commission passed an act containing the following provisions:

> SEC. 1998. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the act of Congress approved March second, nineteen hundred and three, or of bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion which is exported, or of which the exportation is attempted, subsequent to November seventeenth, nineteen hundred and five, and contrary to the provisions of this section, shall be liable to forfeiture under due process of law, and one-third of the sum or value of bullion so forfeited shall be payable to the person upon whose information given to the proper authorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government, and accrue to the gold-standard fund: *Provided*, That the prohibition herein contained shall not apply to sums of twenty-five pesos or less of the new coins authorized by section two thousand and one hereof and carried by passengers leaving the Philippine Islands.
>
> SEC. 1999. The exportation or the attempt to export Philippine silver coins, or bullion made from such coins, from the Philippine Islands contrary to law is hereby declared to be a criminal offense, punishable, in addition

> to the forfeiture of said coins or bullion as above provided, by a fine not to exceed ten thousand pesos, or by imprisonment for a period not to exceed one year, or both, in the discretion of the court. (Comp. acts of the Philippine Commission, 1907, Title 33, ch. 194.)

Plaintiff in error insists that the Commission was without authority to pass this act, because it is inconsistent with the first clause in section 5 of the said act of July 1, 1902, which provides that—

> No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law. (32 Stat., 692.)

ARGUMENT.

I.

An accused is not deprived, under the act of the Philippine Commission, of either his property or his liberty without due process of law.

With reference to the seizure and forfeiture of the money, or bullion made by reducing the same, it is expressly provided that it "shall be liable to forfeiture *under due process of law*," that is, that before such forfeiture can be declared, notice must be given and a hearing had in court, and the judgment of forfeiture must be the result of legal proceedings prosecuted in the usual way.

The exportation of, or attempt to export, the coin or bullion is also declared to be a criminal offense, and punishment is prescribed in case of conviction, but

of course no punishment can be inflicted until a conviction is had by due process of law.

The present proceedings illustrate the manner in which it is contemplated one shall be deprived of his liberty for the commission of the offense declared by the act. Complaint was filed against plaintiff in error in the usual form; he was arraigned in court and pleaded; he had a full and fair hearing, introducing on the trial a number of witnesses on his behalf, as well as testifying himself, and he was represented in court by counsel. From the judgment rendered an appeal was taken by him to the Supreme Court of the Philippine Islands, where a careful and elaborate consideration was given to his case, and now he presents to this honorable court his grounds for reversal and argument in support of same.

Certainly no criticism can be made of this statute for attempting to deprive an accused of his liberty or property without a full and fair hearing and without due process of law.

II.

The act of the Philippine Commission is not invalid because of any direct effect upon the value of the coin, or any restriction upon the right of contract.

It is urged, however, that the Commission was without power to prohibit exportation of the coins in question, or bullion produced by reducing such coins, or to declare the exportation or attempt to export the same a criminal offense.

This insistence is based upon two grounds: (1) That the effect of such legislation is, in a measure, to

affect or destroy the value of the coins, and to that extent deprives the owner thereof of his property; and (2) that such legislation deprives the holder of such coins of his free power of contract with reference thereto, and therefore deprives him of his liberty without due process of law.

These contentions will be considered in the order stated.

1. *The act of the Philippine Commission does not deprive holders of coins of their property within the meaning of the act of Congress, by reducing the value of same; and if their value were reduced, the act was authorized by section 6, chapter 986, act of March 2, 1903.*

(*a*) The value of these coins were not in the least reduced by the legislation. They are declared by said act of Congress to be legal tender, unless otherwise provided, and they had precisely the same purchasing power after the passage of the act of the Philippine Commission as before.

(*b*) These coins were circulating mediums and continually passed from hand to hand, and undoubtedly were not in the possession of plaintiff in error at the time the act was passed, and they, therefore, possessed precisely the same value when seized as when they came into his possession.

(*c*) Under the act of Congress, the Philippine Commission had ample power to enact all reasonable legislation with reference to the circulation of these coins.

While money, which has been coined by a government, is the property of the owner, yet there is attached to it certain qualities of special interest to the public unlike that of any other species of property. By being made by law a medium of exchange, it is given a peculiar value and peculiar characteristics which are subject to change at any time by the authority which created them; and the metal itself, because it bears the impress designed by the Government and is imbued with these peculiar attributes, must be held subject to legislation. Such principle has been recognized in all nations and at all times.

By Article I, section 8, clause 5 of the Constitution, Congress was vested with the power to "coin money, regulate the value thereof, and of foreign coin." The Fifth Amendment was thereafter adopted, which, among other things, provided that no person shall be "deprived of life, liberty, or property without due process of law." Inasmuch as this latter provision was incorporated into the Constitution as an amendment, all the provisions contained in the Constitution as first adopted must be consistent therewith; that is, this amendment repealed or abrogated, by implication, everything in the Constitution which was inconsistent with it, precisely as a subsequent act of Congress repeals by implication all prior provisions of law which are inconsistent therewith; consequently Congress has never, since the adoption of the Fifth Amendment, possessed any authority with reference to the coinage of money and the regulation of its value, which is inconsistent with the due process of

law provision of said amendment. Yet Congress has always assumed without question to pass laws vesting coins with the qualities of legal tender, depriving them of such qualities, regulating the ratio of coinage, and in fact, all character of laws which are deemed of advantage to the public use of such coins.

As an example of such legislation, by the act of May 8, 1792 (1 Stat., ch. 39, sec. 2), Congress went so far as to declare that after a certain date no copper coins except of the character described in the first section should pass current as money; that they should not be paid or received in payment for any debt; that such coins paid or offered should be forfeited, and that any person paying or offering to pay, or receiving the same, should be subject to the forfeiture of the sum of $10. This legislation was for the purpose of calling in all copper coins except those authorized to be coined by that act of Congress.

Again, by the act of February 9, 1793 (1 Stat., 300), chapter 5, section 2, it was declared that at a certain time thereafter all foreign gold coins and foreign silver coins, except Spanish milled dollars and parts of such dollars, should cease to be a legal tender.

Section 5459, Revised Statutes (Penal Code, 165), makes it a serious offense to fraudulently deface, mutilate, impair, diminish, falsify, scale, or lighten gold or silver coins which are coined at the mints of the United States, or to cause the same to be done, or to fraudulently pass, utter, sell, or publish the same, or attempt to do so.

36646—10——2

Section 5189, Revised Statutes (Penal Code, 176), makes it an offense to mutilate, cut, deface, disfigure, or perforate with holes, or unite or cement together, etc., any bank bill, draft, note, etc., issued by any national banking association, or to cause or procure the same to be done, with intent to render such bill or note unfit to be reissued.

A careful review of the financial legislation of the country will show many acts of the same character.

It appears, however, that Congress has never, for the purpose of maintaining the parity between the two metals, or of retaining an adequate supply of them in this country, undertaken to prevent the exportation of either of them, but its failure to enact such a law was not because it did not consider that it was vested with such power. A resolution to that effect was introduced in the Senate during the Fifteenth Congress, and a careful consideration was given thereto by the Finance Committee, which made a report in January, 1819; and in this report, after expressing the opinion that a law prohibiting the exportation of the metals would be unwise and ineffective, and that—

> Commerce is always destined to flourish most where it is permitted to pursue its own paths, marked out by itself, embarrassed as little as possible by legislative regulations or restrictions,

it recommended the adoption of a resolution—

> That it is not *expedient* for Congress to adopt any regulations for preventing the exporta-

> tion of the gold, silver, or copper coins of the United States. (Abridgment of Debates, vol. 6, p. 191.)

These were the views of the committee as to the *wisdom* of such legislation, but it was not supposed or suggested that Congress was not vested with full power to authorize such legislation if it should differ with the view thus expressed.

The conditions existing in the Philippine Islands were such, and its commercial relationship with the Asiatic nations and the medium of exchange between those several countries were of such character, as to induce the Philippine Commission to believe that the most effective way to maintain the parity between the gold and silver pesos was to prevent the exportation of the silver peso; and it is not a question whether the Commission was right or wrong in its view, because they were expressly by said act of March 2, 1903, vested with the power to adopt such measures as they might "*deem proper*" to maintain the value of the silver Philippine peso at the rate of one gold peso; and the judgment of the Commission was not subject to revision by any higher authority.

2. *The act of the Philippine Commission is not inconsistent with the due process of law clause of the organic act of July 1, 1902, in that it restricts or places a limitation upon the right of contract.*

The decisions of this court which, by analogy, sustain this position are numerous. By Article I, section 8, clause 3 of the Constitution, Congress is

vested with power to regulate commerce with foreign nations and among the several States and with the Indian tribes. As heretofore shown, by the Fifth Amendment legislation under this section must conform to the clause providing for due process of law.

In *Patterson* v. *Bark Eudora* (190 U. S., 169, 174, 176) the court had under consideration the act of Congress which prohibited the payment of seamen's wages in advance, and provided that seamen shipped on a foreign vessel from an American port to a foreign port and returned to an American port, who had received a part of their wages in advance, might, after the completion of the voyage, recover by libel filed against the vessel the full amount of their wages, including the advance payment. It was contended that this statute was against the due process of law provision of the Constitution, but it was held that the legislation was warranted by the commerce clause, the court saying:

> Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water. Being so subject, whenever the contract is for employment in commerce, not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce.

And as authority for this decision the court quoted the following from *Frisbie* v. *United States* (157 U. S., 160, 165):

> While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.

Under the commerce clause this court has also sustained acts of Congress which absolutely prohibited the sale of intoxicating liquors to Indians.

> *United States* v. *Holliday* (3 Wall., 407).
> *United States* v. *Forty-three Gallons of Whisky* (93 U. S., 188).

In *Buttfield* v. *Stranahan* (192 U. S., 470, 493) there was presented for determination the constitutionality of the tea-inspection act of March 2, 1897 (29

Stat., 604), by which it was provided that a board of seven members should be appointed, who should prepare and submit to the Secretary of the Treasury standard samples of tea, and upon whose recommendation the Secretary should establish uniform standards of purity, quality, and fitness for consumption of imported teas; and that if on the examination of imported tea it should be found to be inferior to the standard, the consignee should be notified, and if he protested, the question should be referred to a board of appraisers designated by the Secretary; and if the tea should be adjudged inferior by such appraisers, the consignee should execute a bond to export such tea out of the limits of the United States within six months; and if it should not be exported within that time, it should be seized and destroyed. One insistence was that the establishment and enforcement of the standards of quality of teas, which operated to deprive the owner of alleged vested rights, constituted a deprivation of property without due process of law. Upon this question the court said:

> As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised. This being true, it results that a statute which restrains

> the introduction of particular goods into the United States from considerations of public policy does not violate the due process of law clause of the Constitution.

Clearly, therefore, there is nothing in the act prohibiting the exportation of the silver pesos coined by the Philippine government which is inconsistent with any clause contained in said act of July 1, 1902, and especially with the due process of law clause, which is the only one relied upon in the assignments of error or in the brief filed on behalf of plaintiff in error in this court.

III.

The act of the Philippine Commission was an authorized exercise of the police power.

The Philippine Commission, in it legislative powers, bears the same relation to the Philippine government as a legislature does to a State. The treaty between the United States and Spain, by which the Philippine Islands were acquired, contained no provision with reference to the laws that should thereafter be in force therein; and, therefore, it was only the political laws that were modified by a change of sovereignty, but those laws which regulated the intercourse and general conduct of individuals remained the same. (*American Ins. Co.* v. *Canter*, 1 Pet., 511, 542; *Leitensdorfer* v. *Webb*, 20 How., 176, 177).

The general tenor as well as the specific provisions of the instructions to the Philippine Commission, signed by President McKinley on April 7, 1900, show that it was his purpose to vest that Commission with

general legislative authority. (Comp. Acts Philippine Com., pp. 10–15.)

By the first provision in the act of July 1, 1902, Congress approved and ratified—

> the action of the President of the United States in creating the Philippine Commission, and authorizing said commission to exercise the powers of government to the extent and in the manner and form, subject to the regulation and control set forth in the instructions of the President dated April 7, 1900.

The commission is therefore vested with full power of legislating, except as restricted by acts of Congress, and manifestly may exercise the police power whenever it might be exercised by the legislature of a State.

The Supreme Court of the Philippine Islands largely rested its decision upon this power, and its discussion of the subject is so full (Rec., pp. 48–50) that no additional comment need be here made.

IV.

The judgment of the Supreme Court and the Court of First Instance should not be reversed on the ground that it is against the weight of evidence and without authority of law.

There are two reasons why the judgment should not be reversed on this ground:

1. *The case is here on writ of error, and this court will not, therefore, review the evidence.*

In *Behn* v. *Campbell* (205 U. S.), which was an action to recover money alleged to be due on account

of labor and materials, the defendant first appealed to this court from the judgment of the Supreme Court of the Philippine Islands, but the appeal was dismissed on the ground that the case could be brought up by writ of error alone. Thereupon a writ of error was obtained, and defendant sought to have reviewed the facts to the same extent as they are reviewed in a case brought up by appeal; and in denying such right of review, the court said:

> But this overlooks the vital distinction between appeals and writs of error which has always been observed by this court and recognized in legislation. An appeal brings up questions of fact as well as of law, but upon a writ of error only questions of law apparent on the record can be considered, and there can be no inquiry whether there was error in dealing with questions of fact (citing a number of authorities).

2. *The decision of the Supreme Court of the Philippine Islands and the Court of First Instance is not against the weight of evidence.*

The Court of First Instance had before it all the witnesses, and the conclusion there reached is given in the following language:

> From the appearance of the witnesses while testifying, who testified that the said coins were brought to the Philippine Islands for the purpose of buying other coins, and from the unreasonableness of the proposition advanced by them, I am unable to give their testimony

> credence. I am unable to believe that any person would send this amount of coin to the Philippine Islands from Hongkong in the care of the defendant, who was an employee, as before stated, on board the steamer *Taming*, without the knowledge of the owners of the vessel or its shipping agent at Hongkong and without the knowledge of the master of the vessel.

The Supreme Court of the Philippine Islands also reviewed the evidence, and were unanimously of the opinion that the testimony given by the witnesses corroborating plaintiff in error was wholly unreliable, and they found that the decision of the lower court was abundantly sustained by the evidence. (Rec., pp. 51, 52.) The testimony of plaintiff in error's witnesses is unreasonable, and contains much internal evidence of unreliability.

It is insisted therefore that the judgment of the court below should be affirmed.

J. A. FOWLER,
Assistant Attorney-General.

O

LING SU FAN *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 20. Argued October 27, 1910.—Decided November 14, 1910.

On writ of error the errors considered must be only those of law, and this court cannot consider sufficiency of evidence to convict if it is conceded that there was any evidence at all.

Sections 1 and 2 of law No. 1411 of the Philippine Commission, prohibiting exportation of Philippine silver coin from the Philippine

Islands, is not void as depriving the owner of such coin of his property therein without due process of law within the meaning of the due process provision of the organic act of 1902. Congress, by the act of March 2, 1903, c. 980, 32 Stat. 952, authorized the government of the Philippine Islands to adopt such measures as it deemed proper and not inconsistent with the organic act to maintain parity of gold and silver coinage.

In determining whether a law of the Philippine Commission is invalid as inconsistent with the organic act this court puts aside all questions of the wisdom of the law, even if enacted in the face of axioms of commerce, and considers only whether power exists to enact under, and whether the enactment is inconsistent with, the organic act.

The power to coin money and regulate its value is a prerogative of sovereignty exclusively vested in the Congress of the United States, from which is derived the power of the government of the Philippine Islands in respect to local coinage.

The quality of legal tender of coin is an attribute of law aside from its bullion value and renders such coin as the Government has made legal tender subject to such reasonable regulations by the police power as public policy may require including prohibition against exportation, and the exercise of such power does not deprive the owner of his property without due process of law even if the bullion value in a foreign country exceeds the legal tender value in the country of coinage.

Where power is given by Congress to the Philippine Commission to prohibit an act, the power includes making violation of the prohibition a misdemeanor.

THE facts, which involve the validity of the Philippine law prohibiting the exportation from the Philippine Islands of silver coin, are stated in the opinion.

Mr. J. M. Vale, with whom *Mr. Marion Butler* and *Mr. Lionel D. Hargis* were on the brief, for plaintiff in error:

The Philippine Commission had no power to enact law No. 1411. The court below rests its decision sustaining the power of the Civil Commission in the premises, mainly upon the police powers of the State, but while the

courts have not defined the limit of the police power under the terms of any general rule, that power has a limit. See *Lawton* v. *Steele*, 152 U. S. 133, 143, holding that it must appear that the interests of the public generally, as distinguished from those of a particular class, require the interference, and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The inhibition upon the use of property imposed by the act passes the limit as here fixed.

Even if the exportation of silver pesos tended to enhance their value above that of the gold pesos, thus disturbing the parity between the two, which is denied, a remedy not impairing the individual right of property was at hand and has been applied to keep coin at home for ages; that of reducing the bullion value of the coin. There was no need of the general public or any reasonable necessity for the act. No necessity existed for the infringement of the rights of private property. The inducement to carry the coins out of the country wholly disappears by an adjustment of the bullion value to commercial conditions, which is one of the functions of government. Money is coined as a medium of exchange. That object is defeated by legislation curtailing its use. The paramount "public interest" lies in a known and accepted medium of exchange supplied by the coin of the realm, not in restrictions upon the use of that coin as a medium of exchange.

A government having a written constitution cannot divest one individual of his property by direct legislation and invest it in another. *Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 235.

The effect of the inhibition to export pesos from the Philippine Islands is to legislate the difference in exchange out of the pocket of the owner of the pesos and into that of the money broker.

The means adopted by law No. 1411 for the retention of silver in the Islands are unnecessary and unduly oppressive upon individuals and destroy the property rights of the individual by way of penalty without opportunity to be heard, particularly in that by such legislation the individual is allowed the choice of leaving his money in the Philippine Islands or subjecting himself to the uncertain and erratic course of rates of exchange in removing it.

The act of March 2, 1903, authorizing the Civil Commission of the Philippine Islands to maintain the value of the silver Philippine peso at the rate of one gold peso, specifically limited the power of the Civil Commission to adopting only such measures to accomplish that end as were not inconsistent with the act of July 1, 1902.

The decision of the court below is against the weight of evidence, and without authority of law.

Mr. Assistant Attorney General Fowler for the United States:

The act of the Philippine Commission is not invalid because of any direct effect upon the value of the coin, or any restriction upon the right of contract, nor does it deprive holders of coins of their property within the meaning of the act of Congress, by reducing the value of same; and if their value were reduced, the act was authorized by § 6, c. 980, act of March 2, 1903.

The value of these coins was not reduced by the legislation. They are declared by said act of Congress to be legal tender, unless otherwise provided, and they had the same purchasing power after the passage of the Philippine act as before.

These coins were circulating mediums and continually passed from hand to hand, and undoubtedly were not in the possession of plaintiff in error at the time the act was passed, and they, therefore, possessed precisely the same

value when seized as when they came into his possession.

Under the act of Congress, the Philippine Commission had ample power to enact all reasonable legislation with reference to the circulation of these coins.

By Art. I, § 8, c. 5, of the Constitution, Congress was vested with the power to "coin money, regulate the value thereof, and of foreign coin." The Fifth Amendment was thereafter adopted, which, among other things, provided that no person shall be "deprived of life, liberty, or property without due process of law." Inasmuch as this latter provision was incorporated into the Constitution as an amendment, all the provisions contained in the Constitution as first adopted must be consistent therewith. This amendment repealed or abrogated, by implication, everything in the Constitution which was inconsistent with it, precisely as a subsequent act of Congress repeals by implication all prior provisions of law which are inconsistent therewith; although Congress, since the adoption of the Fifth Amendment, has not possessed any authority with reference to the coinage of money and the regulation of its value, which is inconsistent with the due process of law provision of said Amendment it has always assumed without question to pass laws vesting coins with the qualities of legal tender, depriving them of such qualities, regulating the ratio of coinage, and in fact, all character of laws which are deemed of advantage to the public use of such coins. See acts of May 8, 1792, 1 Stat., c. 39, § 2; February 8, 1793, 1 Stat. 300, c. 5, § 2; § 5459, Rev. Stat.; Penal Code, 165; § 5189, Rev. Stat.; Penal Code, 176.

The act of the Philippine Commission is not inconsistent with the due process of law clause of the organic act of July 1, 1902, in that it restricts or places a limitation upon the right of contract. *Patterson* v. *Bark Eudora*, 190 U. S. 169, 174; *Frisbie* v. *United States*, 157 U. S. 160, 165;

United States v. *Holliday*, 3 Wall. 407; *United States* v. *Forty-three Gallons of Whiskey*, 93 U. S. 188; *Buttfield* v. *Stranahan*, 192 U. S. 470, 493.

The act of the Philippine Commission was an authorized exercise of the police power. *American Ins. Co.* v. *Canter*, 1 Pet. 511, 542; *Leitensdorfer* v. *Webb*, 20 How. 176, 177.

Under instructions to the Philippine Commission signed by President McKinley on April 7, 1900, Comp. Acts Phil. Comm., pp. 10–15, and the act of July 1, 1902, the commission is vested with full power of legislating, except as restricted by acts of Congress. Manifestly it may exercise the police power whenever it can be exercised by the legislature of a State.

The case is here on writ of error, and this court will not, therefore, review the evidence. *Behn* v. *Campbell*, 205 U. S. 403. The decision is not against the weight of evidence.

MR. JUSTICE LURTON delivered the opinion of the court.

The plaintiff in error has been convicted of the offense of "exporting from the Philippine Islands Philippine silver coin" in violation of Philippine law No. 1411, being §§ 1998 and 1999, Compiled Acts of the Philippine Commission, title 3, chapter 194. Sections 1 and 2 of law No. 1411 read as follows:

"SEC. 1. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the act of Congress approved March 2nd, 1903, or the bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion which is exported or of which the exportation is attempted subsequent to the passage of this Act and contrary to its provisions, shall be liable to forfeiture, under due process of law, and one-third of the sum or value of the bullion so forfeited shall be payable to the person upon whose information, given to the proper au-

thorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government and accrue to the gold standard fund. Provided, That the prohibition herein contained shall not apply to sums of P. 25.00 or less, carried by passengers leaving the Philippine Islands.

"SEC. 2. The exportation or attempt to export Philippine silver coin or bullion made from such coins from the Philippine Islands, contrary to law, is hereby declared to be a criminal offense, punishable, in addition to the forfeiture of the said coins or bullion as above provided, by a fine not to exceed P. 10,000.00, or by imprisonment for a period not to exceed one year, or both, in the discretion of the court."

We may pass over the assignments of error which challenge the sufficiency of the evidence to warrant a conviction, inasmuch as it is not contended that there was no evidence. This is a writ of error, and upon such a writ the error to be considered must be confined to error of law.

The substantial question is as to whether a law which prohibits the exportation of Philippine silver coin from the Philippine Islands is a law which deprives the owner of his property in such coins without due process of law, in violation of that prohibition of the organic act of July 1, 1902, which provides that "no law shall be enacted in said islands which shall deprive any person of life, liberty or property without due process of law." Act of July 1, 1902, c. 1369, § 5, 32 Stat. at Large, 691, 692. The authority for the law is found in the same act of Congress, §§ 76 *et seq.*, 32 Stat. at Large, 710, which authorized the Philippine government to establish a mint in the city of Manila for coinage purposes and to enact laws for its operation, and for the striking of certain coins. By the later act of Congress of March 2, 1903 (c. 980, 32 Stat. at Large, 952), it was provided that the gold peso, con-

sisting of 12.9 grains of gold, nine-tenths fine, should be the unit of value in the islands. The second section of that act provided as follows:

"That in addition to the coinage authorized for use in the Philippine Islands by the act of July first, nineteen hundred and two, entitled 'An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes,' the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos, for use in said islands, a silver coin of the denomination of one peso and of the weight of four hundred and sixteen grains, and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be of pure metal and one hundred alloy, and the alloy shall be of copper."

Section six of the same act of March 2, 1903, provided:

"That the coinage authorized by this act shall be subject to the conditions and limitations of the provisions of the act of July first, nineteen hundred and two, entitled 'An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes,' except as herein otherwise provided; and the government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said act of July first, nineteen hundred and two, to maintain the value of the silver Philippine peso at the rate of one gold peso;"

In a subsequent part of the same section the issuance of certificates of indebtedness, bearing interest, was authorized as a specific measure for maintaining the parity between the silver and gold peso.

The law of the Philippine Commission, above set out, under which the conviction of the plaintiff in error was secured, must rest upon the provision of § 6, above set out, as a means of maintaining "the value of the silver

peso at the rate of one gold peso." Passing by any consideration of the wisdom of such a law prohibiting the exportation of the Philippine Islands silver pesos as not relevant to the question of power, a substantial reason for such a law is indicated by the fact that the bullion value of such coin in Hong Kong was some nine per cent greater than its face value. The law was, therefore, adapted to keep the silver pesos in circulation as a medium of exchange in the islands and at a parity with the gold peso of Philippine mintage.

The power to "coin money and regulate the value thereof, and of foreign coin," is a prerogative of sovereignty and a power exclusively vested in the Congress of the United States. The power which the government of the Philippine Islands has in respect to a local coinage is derived from the express act of Congress. Along with the power to strike gold and silver pesos for local circulation in the islands was granted the power to provide such measures as that government should "deem proper," not inconsistent with the organic law of July 1, 1902, necessary to maintain the parity between the gold and silver pesos. Although the Philippine act cannot, therefore, be said to overstep the wide legislative discretion in respect of measures to preserve a parity between the gold and silver pesos, yet it is said, that if the particular measure resorted to be one which operates to deprive the owner of silver pesos, of the difference between their bullion and coin value, he has had his property taken from him without compensation, and, in its wider sense, without that due process of law guaranteed by the fundamental act of July, 1902.

Conceding the title of the owner of such coins, yet there is attached to such ownership those limitations which public policy may require by reason of their quality as a legal tender and as a medium of exchange. These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere conse-

quence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange. As an incident, the Government may punish defacement and mutilation and constitute any such act, when fraudulently done, a misdemeanor. Rev. Stat., §§ 5459, 5189.

However unwise a law may be, aimed at the exportation of such coins, in the face of the axioms against obstructing the free flow of commerce, there can be no serious doubt but that the power to coin money includes the power to prevent its outflow from the country of its origin. To justify the exercise of such a power it is only necessary that it shall appear that the means are reasonably adapted to conserve the general public interest and are not an arbitrary interference with private rights of contract or property. The law here in question is plainly within the limits of the police power, and not an arbitrary or unreasonable interference with private rights. If a local coinage was demanded by the general interest of the Philippine Islands, legislation reasonably adequate to maintain such coinage at home as a medium of exchange is not a violation of private right forbidden by the organic law. Obviously, if the Philippine government had power to prohibit the exportation or melting of Philippine silver pesos, it had the power to make the violation of the prohibition a misdemeanor. The proceedings for the enforcement of the law included the ordinary process in criminal cases lawful in the islands and not forbidden by the act of July, 1902.

Judgment affirmed.